

# **Regulation 1705**

## ***Relief from Liability***

Complete Rule Making File

*OAL Approval*

*Index*

1. *Final Statement of Reasons*
2. *Updated Informative Digest*
3. *Business Tax Committee Minutes,*
4. *Reporter's Transcript Business Taxes Committee, September 16, 2008*
5. *Estimate of Cost or Savings, September 30, 2008*
6. *Economic and Fiscal Impact Statements, October 3, 2008*
7. *Notice of Publications*
8. *Notice to Interested Parties, October 17, 2008*
9. *Rescheduled Hearing Notice of Publications*
10. *Public Comments*
11. *Statement of Compliance*
12. *Reporter's Transcript, Item F4, Public Hearing, December 17, 2008*
13. *Minutes, December 17, 2008, and Exhibits*

**State of California  
Office of Administrative Law**

In re:

Board of Equalization

NOTICE OF APPROVAL OF REGULATORY  
ACTION

Regulatory Action:

Government Code Section 11349.3

Title 18, California Code of Regulations

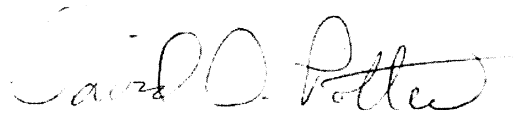
OAL File No. 2009-0126-05 S

Amend section: 1705

This action affords relief from liability for failure to report and pay sales and use taxes to the state, for a franchisee that relies upon written advice given by the Board of Equalization to its franchisor when the franchisor requested the advice on behalf of franchisees and specifically named the franchisee as a subject of the request.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 4/10/2009.

Date: 3/11/2009



David D. Potter  
Senior Staff Counsel

For: SUSAN LAPSLEY  
Director

Original: Ramon Hirsig  
Copy: Richard Bennion

**RECEIVED**

MAR 13 2009

by EXECUTIVE DIRECTOR'S OFFICE  
STATE BOARD OF EQUALIZATION

**RECEIVED**

MAR 16 2009

Board Proceedings

**OFFICE OF ADMINISTRATIVE LAW**

300 Capitol Mall, Suite 1250  
Sacramento, CA 95814  
(916) 323-6225 FAX (916) 323-6826



**SUSAN LAPSLEY**  
Director

**MEMORANDUM**

TO: Richard Bennion  
FROM: OAL Front Desk *LB*  
DATE: 3/12/2009  
RE: Return of Approved Rulemaking Materials  
OAL File No. 2009-0126-05S

OAL hereby returns this file your agency submitted for our review (OAL File No. 2009-0126-05S regarding Relief from Liability).

If this is an approved file, it contains a copy of the regulation(s) stamped "ENDORSED APPROVED" by the Office of Administrative Law and "ENDORSED FILED" by the Secretary of State. The effective date of an approved file is specified on the Form 400 (see item B.5). (Please Note: The 30<sup>th</sup> Day after filing with the Secretary of State is calculated from the date the Form 400 was stamped "ENDORSED FILED" by the Secretary of State.)

**DO NOT DISCARD OR DESTROY THIS FILE**

Due to its legal significance, you are required by law to preserve this rulemaking record. Government Code section 11347.3(d) requires that this record be available to the public and to the courts for possible later review. Government Code section 11347.3(e) further provides that "...no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of." See also the Records Management Act (Government Code section 14740 et seq.) and the State Administrative Manual (SAM) section 1600 et seq.) regarding retention of your records.

If you decide not to keep the rulemaking records at your agency/office or at the State Records Center, you may transmit it to the State Archives with instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. See Government Code section 11347.3(f).

Enclosures

## NOTICE PUBLICATION/REGULATION SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

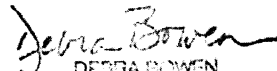
STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2008-1003-01	REGULATORY ACTION NUMBER 2009-0126-055	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

ENDORSED FILED  
IN THE OFFICE OF

2009 MAR 11 PM 4:38

  
 DEBRA BOWEN  
 SECRETARY OF STATE

NOTICE	REGULATIONS
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AGENCY WITH RULEMAKING AUTHORITY  
State Board of Equalization

AGENCY FILE NUMBER (if any)

## A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER 08 #42 Z	PUBLICATION DATE 10-17-2008

## B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Relief from Liability	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
---	--

SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT	ENDORSED APPROVED
	AMEND 1705	MAR 11 2009
	REPEAL	Office of Administrative Law
TITLE(S) 18		

3. TYPE OF FILING			
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code § 11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code § 11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, § 11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, § 100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code § 11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, § 11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, § 11346.1(b))	<input type="checkbox"/> Other (Specify) _____		

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, § 44 and Gov. Code § 11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, § 100)			
<input checked="" type="checkbox"/> Effective 30th day after filing with Secretary of State	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> § 100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____

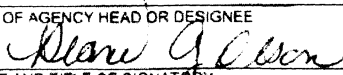
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM § 6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON Richard E. Bennion	TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984	E-MAIL ADDRESS (Optional) rbennion@boe.ca.gov
---	------------------------------------	---	--

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

For use by Office of Administrative Law (OAL) only

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE January 26, 2009
TYPED NAME AND TITLE OF SIGNATORY Diane G. Olson, Chief, Board Proceedings Division	

## **Regulation 1705. Relief From Liability.**

(a) In General. A person may be relieved from the liability for the payment of sales and use taxes, including any penalties and interest added to those taxes, when that liability resulted from the failure to make a timely return or a payment and such failure was found by the Board to be due to reasonable reliance on:

- (1) Written advice given by the Board under the conditions set forth in subdivision (b) below; or
- (2) Written advice in the form of an annotation or legal ruling of counsel under the conditions set forth in subdivision (d) below; or
- (3) Written advice given by the Board in a prior audit of that person under the conditions set forth in subdivision (c) below. As used in this regulation, the term "prior audit" means any audit conducted prior to the current examination where the issue in question was examined.

Written advice from the Board may only be relied upon by the person to whom it was originally issued or a legal or statutory successor to that person. Written advice from the Board which was received during a prior audit of the person under the conditions set forth in subdivision (c) below, may be relied upon by the person audited or by a legal or statutory successor to that person.

The term "written advice" includes advice that was incorrect at the time it was issued as well as advice that was correct at the time it was issued, but, subsequent to issuance, was invalidated by a change in statutory or constitutional law, by a change in Board regulations, or by a final decision of a court of competent jurisdiction. Prior written advice may not be relied upon subsequent to: (1) the effective date of a change in statutory or constitutional law and Board regulations or the date of a final decision of a court of competent jurisdiction regardless that the Board did not provide notice of such action; or (2) the person receiving a subsequent writing notifying the person that the advice was not valid at the time it was issued or was subsequently rendered invalid. As generally used in this regulation, the term "written advice" includes both written advice provided in a written communication under subdivision (b) below and written advice provided in a prior audit of the person under subdivision (c) below.

### **(b) Advice Provided in a Written Communication**

(1) Advice from the Board provided to the person in a written communication must have been in response to a specific written inquiry from the person seeking relief from liability, or from his or her representative. To be considered a specific written inquiry for purposes of this regulation, representatives must identify the specific person for whom the advice is requested. Such inquiry must have set forth and fully described the facts and circumstances of the activity or transactions for which the advice was requested.

(2) A person may write to the Board and propose a use tax reporting methodology for qualified purchases subject to use tax. If the Board concludes that the reporting method reflects the person's use tax liability for the defined population, then the Board may write to the person approving the use of the reporting method. The approval shall be subject to certain conditions. The following conditions shall be included in the approval:

- (A) The defined population of the purchases that will be included in the reporting method;
- (B) The percentage of purchases of the defined population that is subject to tax;
- (C) The length of time the writing shall remain in effect;
- (D) The definition of a significant or material change that will require rescinding the approved reporting method; and
- (E) Other conditions as required.

The written approval of the use tax reporting methodology is void and shall not be relied upon for the purposes of Revenue and Taxation Code section 6596 if the taxpayer files a claim for refund for tax that had been reported based upon this reporting method.

(c) Written Advice Provided in a Prior Audit. Presentation of the person's books and records for examination by an auditor shall be deemed to be a written request for the audit report. If a prior audit report of the person requesting relief contains written evidence which demonstrates that the issue in question was examined, either in a sample or census (actual) review, such evidence will be considered "written advice from the Board" for purposes of this regulation. A census (actual) review, as opposed to a sample review, involves examination of 100% of the person's transactions pertaining to the issue in question. For written advice contained in a prior audit of the person to apply to the person's activity or transaction in question, the facts and conditions relating to the activity or transaction must not have changed from those which occurred during the period of operation in the prior audit. Audit comments, schedules, and other writings prepared by the Board that become part of the audit work papers which reflect that the

activity or transaction in question was properly reported and no amount was due are sufficient for a finding for relief from liability, unless it can be shown that the person seeking relief knew such advice was erroneous.

(d) Annotations and Legal Rulings of Counsel. Advice from the Board provided to the person in the form of an annotation or legal ruling of counsel shall constitute written advice only if:

(1) The underlying legal ruling of counsel involving the fact pattern at issue is addressed to the person or to his or her representative under the conditions set forth in subdivision (b) above, or

(2) The annotation or legal ruling of counsel is provided to the person or his or her representative by the Board within the body of a written communication and involves the same fact pattern as that presented in the subject annotation or legal ruling of counsel.

(e) Trade or Industry Associations or Franchisors. A trade or industry association requesting advice on behalf of its member(s) must identify and include the specific member name(s) for whom the advice is requested for relief from liability under this regulation. A franchisor requesting advice on behalf of its franchisee(s) must identify and include the specific franchisee name(s) for whom the advice is requested for relief from liability under this regulation.

For an identified trade or industry member or franchisee to receive relief based on advice provided in the written communication to the trade or industry association or franchisor, the activity or transactions in question must involve the same facts and circumstances as those presented in the written inquiry by the association or franchisor.

NOTE: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Section 6596, Revenue and Taxation Code

## **Title 18, Public Revenue**

### **Sales and Use Tax Regulation 1705, Relief From Liability**

#### **FINAL STATEMENT OF REASONS**

##### **Overview/Non-Controlling Summary**

##### **Update**

There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Regulatory Action.

##### **Specific Purpose**

The purpose of the proposed regulation is to interpret, implement, and make specific Revenue and Taxation Code section 7261. This regulation is necessary to provide guidance to taxpayers affected by this statute.

##### **Factual Basis**

Revenue and Taxation Code section (Section) 6596 provides relief from tax, interest, and penalty charges due on a transaction if the Board determines that the taxpayer failed to pay tax because it reasonably relied on erroneous written advice from the Board. For relief to apply, the Board must have received a written request for advice on the transaction, the request must have identified the taxpayer to whom the advice applied, and the request must have fully described the facts and circumstances of the transaction. Section 6596 subdivision (d) states that, "[o]nly the person making the written request shall be entitled to rely on the board's written advice to that person." Accordingly, taxpayers cannot obtain relief by relying on a written opinion given to another business, even if the transactions are similar. However, a taxpayer may rely on advice given to the taxpayer's representative provided that the representative identifies the person for whom the advice is requested. Regulation 1705, Relief from Liability, is based upon Section 6596 and explains its provisions in more detail. In 1999, Regulation 1705 was amended to extend Section 6596 relief to trade or industry association members when an association requests written advice on behalf of its members. In order to obtain relief under Section 6596, the members must be identified in the association's request for advice. Proposed regulatory changes to sales and use tax regulation 1705, will explain that similar relief applies to franchisees and franchisors. Pursuant to Government Code section 11346.5(a)(8), the Board of Equalization finds that the adoption of the proposed regulation will not have a significant adverse economic impact on private businesses or persons. The regulation is proposed to interpret, implement, and make specific the authorizing statutes. These changes will clarify the interpretation or administration of the sales and use tax laws. Therefore, the Board has determined that these changes will not have a significant adverse economic impact on private businesses or persons.

##### **Local Mandate Determination**

The Board has determined that the proposed amendments do not impose a mandate on local agencies or school districts. Further, the Board has determined that the amendments and regulations will result in no direct or indirect cost or savings to any State agency, any costs to local agencies or school districts that are required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government Code or other non-discretionary costs or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

### **Response to Public Comment**

On December 17, 2008, the Board held a public hearing on the proposed amendments to Sales and Use Tax Regulation 1705. Public comment was received at the hearing from Lindsay Craine, representing Color Me Mine. Ms Craine spoke in favor of the proposed amendments.

### **Small Business Impact**

The State Board of Equalization has determined that the adoption of the amendments to Regulation 1705 will have no significant statewide adverse economic impact directly affecting small business. The adoption of the proposed amendments to this regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. The amendments to the regulation as proposed will not be detrimental to California business in competing with businesses in other states. The proposed regulations may affect small business.

### **Cost Impact on Private Person or Businesses**

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

### **Significant Effect on Housing Costs**

No significant effect.

### **Federal Regulations**

Regulation 1705 and the proposed changes have no comparable federal regulations.

### **Alternatives Considered**

By its motion, the Board determined no alternative to promulgating the regulations would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the adopted regulations.

### **Authority**

Section 7051, Revenue and Taxation Code

### **Reference**

Reference: Section 6596, Revenue and Taxation Code

# Memorandum

To : David Potter  
Attorney  
Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814

Date March 11, 2009

From : Richard Bennion  
Regulations Coordinator  
Board Proceedings Division, MIC: 80

Subject : *OAL File No. 2009-0126-05S*  
*Regulation 1705, Sales for Resale*

This memo is to provide you authorization to:

- 1) Substitute the corrected regulations final statement of reasons behind tab one.
- 2) Substitute the updated verification attached to the index behind the index tab.

I will walk these documents over to OAL this morning.

If you have any questions or comments, please notify me at (916) 445-2130 or email at [Richard.Bennion@boe.ca.gov](mailto:Richard.Bennion@boe.ca.gov).



REB

Rulemaking File Index  
Title 18. Public Revenue  
Sales and Use Tax  
Regulation 1705 *Relief from Liability*

1. Final Statement of Reasons
2. Updated Informative Digest
3. Business Tax Committee Minutes,
  - Minutes
  - Text of Proposed regulation
  - Regulation History
  - Formal Issue Paper Number 08-008
4. Reporter's Transcript Business Taxes Committee, September 16, 2008
  - Minutes, Business Taxes Committee, September 16, 2008
5. Estimate of Cost or Savings, September 30, 2008
6. Economic and Fiscal Impact Statements, October 3, 2008
7. Notice of Publications
  - Form 400 and notice, October 17, 2008
  - Notice and Proposed Text of Regulations 1506 and 1524
  - Email sent to Interested Parties, October 17, 2008
  - CA Regulatory Notice Register 2008, Volume No. 42-Z
8. Notice to Interested Parties, October 17, 2008

The following items are exhibited:

  - Notice of Hearing
  - Initial Statement of Reasons
  - Proposed Text of Regulations 1705
  - Regulation History
9. Rescheduled Hearing Notice of Publications
  - Form 400 and notice, November 28, 2008
  - Email sent to Interested Parties, November 28, 2008
  - CA Regulatory Notice Register 2008, Volume No. 48-Z
10. Public Comments
  - Lindsay Craine, Executive Assistant, Color Me Mine
11. Statement of Compliance
12. Reporter's Transcript, Item F4, Public Hearing, December 17, 2008

13. Minutes, December 17, 2008, and Exhibits

The following items are exhibited:

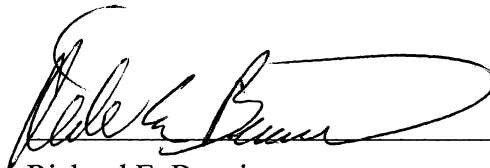
- Notice of Proposed Regulatory Action
- Initial Statement of Reasons
- Proposed Text of Regulation 1705
- Regulation History

VERIFICATION

I, Richard E. Bennion, Regulations Coordinator of the State Board of Equalization, state that the rulemaking file of which the contents as listed in the index is complete, and that the record was initially closed on January 26, 2009, and was reopened on March 10, 2009 for the purpose of amending the Final Statement of Reasons, and was closed on March 11, 2009.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

March 11, 2009

A handwritten signature in dark ink, appearing to read 'Richard E. Bennion', written over a horizontal line.

Richard E. Bennion  
Regulations Coordinator  
State Board of Equalization

Rulemaking File Index  
Title 18. Public Revenue  
Sales and Use Tax  
Regulation 1705 *Relief from Liability*

1. *Final Statement of Reasons*
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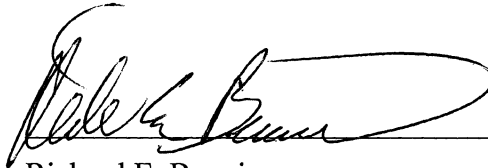
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VERIFICATION

I, Richard E. Bennion, Regulations Coordinator of the State Board of Equalization, state that the rulemaking file of which the contents as listed in the index is complete, and that the record was initially closed on January 26, 2009, and was reopened on March 10, 2009 for the purpose of amending the Final Statement of Reasons, and was closed on March 11, 2009.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

March 11, 2009

A handwritten signature in dark ink, appearing to read "Richard E. Bennion", written over a horizontal line.

Richard E. Bennion  
Regulations Coordinator  
State Board of Equalization

## Title 18, Public Revenue

### Sales and Use Tax Regulation 1705, Relief From Liability

#### FINAL STATEMENT OF REASONS

##### Overview/Non-Controlling Summary

#### **Update**

There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Regulatory Action.

#### **Specific Purpose**

The purpose of the proposed regulation is to interpret, implement, and make specific Revenue and Taxation Code section 6596. This regulation is necessary to provide guidance to taxpayers affected by this statute.

#### **Factual Basis**

Revenue and Taxation Code section (Section) 6596 provides relief from tax, interest, and penalty charges due on a transaction if the Board determines that the taxpayer failed to pay tax because it reasonably relied on erroneous written advice from the Board. For relief to apply, the Board must have received a written request for advice on the transaction, the request must have identified the taxpayer to whom the advice applied, and the request must have fully described the facts and circumstances of the transaction. Section 6596 subdivision (d) states that, “[o]nly the person making the written request shall be entitled to rely on the board’s written advice to that person.” Accordingly, taxpayers cannot obtain relief by relying on a written opinion given to another business, even if the transactions are similar. However, a taxpayer may rely on advice given to the taxpayer’s representative provided that the representative identifies the person for whom the advice is requested. Regulation 1705, Relief from Liability, is based upon Section 6596 and explains its provisions in more detail. In 1999, Regulation 1705 was amended to extend Section 6596 relief to trade or industry association members when an association requests written advice on behalf of its members. In order to obtain relief under Section 6596, the members must be identified in the association’s request for advice. Proposed regulatory changes to sales and use tax regulation 1705, explain that similar relief applies to franchisees and franchisors.

#### **Local Mandate Determination**

The Board has determined that the proposed amendments do not impose a mandate on local agencies or school districts. Further, the Board has determined that the amendments and regulations will result in no direct or indirect cost or savings to any State agency, any costs to local agencies or school districts that are required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government Code or other

non-discretionary costs or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

### **Response to Public Comment**

On December 17, 2008, the Board held a public hearing on the proposed amendments to Sales and Use Tax Regulation 1705. Public comment was received at the hearing from Lindsay Craine, representing Color Me Mine. Ms Craine spoke in favor of the proposed amendments and asked that changes be adopted to allow for an exemption for franchisees who relied on prior audit rulings for identical issues, but who had not requested written advice. In response to Ms. Craine's request staff explained that Section 6596 requires that only the person, trade association member, franchisees or franchisors making the written request or named shall be entitled to rely on the board's written advice to that person. Accordingly Section 6596 prohibits taxpayers from obtaining relief by relying on a written opinion given to another business, even if the transactions are similar. Therefore Ms. Craine's request could not be granted.

### **Small Business Impact**

The State Board of Equalization has determined that the adoption of the amendments to Regulation 1705 will have no significant statewide adverse economic impact directly affecting small business. The adoption of the proposed amendments to this regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. The amendments to the regulation as proposed will not be detrimental to California business in competing with businesses in other states. The proposed regulation may affect small business.

### **Cost Impact on Private Person or Businesses**

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

### **Significant Effect on Housing Costs**

No significant effect.

### **Federal Regulations**

Regulation 1705 and the proposed changes have no comparable federal regulations.

### **Alternatives Considered**

By its motion, the Board determined no alternative to promulgating the regulations would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective as and less burdensome to affected private persons than the adopted regulation.

### **Authority**

Section 7051, Revenue and Taxation Code

**Reference**

Reference: Section 6596, Revenue and Taxation Code

Title 18. Public Revenue

**Sales and Use Tax Regulations 1705, Relief From Liability**

UPDATED INFORMATIVE DIGEST

There have been no changes in applicable laws or to the effect of the proposed regulation from the laws and effects described in the Notice of Proposed Regulatory Action.



## BOARD OF EQUALIZATION

**BUSINESS TAXES COMMITTEE MEETING MINUTES**

HONORABLE BETTY T. YEE, COMMITTEE CHAIR

450 N STREET, SACRAMENTO

MEETING DATE: SEPTEMBER 16, 2008, TIME: 9:30 A.M.

---

**ACTION ITEMS & STATUS REPORT ITEMS****Agenda Item No: 1****Title: Proposed regulatory changes to clarify application of tax to alteration charges****Issue/Topic:**

Should Regulation 1506, *Miscellaneous Service Enterprises*, and Regulation 1524, *Manufacturers of Personal Property*, be amended to clarify the application of tax to alteration charges by clothes cleaners and dyers?

**Committee Discussion:**

Interested parties explained that some dry cleaners make infrequent sales of items such as lint brushes and collar stays as a convenience to their customers. Dry cleaners pay tax on these items when they purchase them and the cleaner's mark-up is minimal. Interested parties believe that the cost of maintaining records and filing sales tax returns just for these sales is burdensome, and asked the Board Members to consider exempting dry cleaners from retailer status when the cleaner's sales of tangible personal property are a minimal amount such as under \$400 or \$600 annually.

Board Members discussed the need to move ahead with the proposed regulation revisions in order to clarify the current application of tax to alteration charges. Board Members also discussed the need for staff to provide education and outreach to dry cleaners, including making those materials available in other languages. Staff agreed to continue to work with the dry cleaner associations to develop and distribute written publications and training.

Board Members also asked staff to work with the dry cleaner's associations to better understand dry cleaners' record keeping systems. In addition, Board Members asked staff to pursue a separate process to consider a de minimis standard for obtaining a seller's permit under the occasional sale rules.

**Committee Action/Recommendation/Direction:**

Upon motion by Dr. Chu, seconded by Ms. Mandel, the Committee unanimously approved and authorized for publication the proposed regulatory amendments. There is no operative date, and implementation will take place 30 days after approval by the Office of Administrative Law. Copies of the proposed amendments to Regulations 1506 and 1524 are attached.

**Agenda Item No: 2****Title: Proposed regulatory changes regarding a franchisee's relief from liability to pay tax based on erroneous advice provided to franchisor****Issue/Topic:**

Should Regulation 1705, *Relief from Liability*, be revised to explain when a franchisee is relieved from the liability to pay tax based on erroneous written advice provided to its franchisor?

**Committee Discussion:**

Staff described the proposed revisions and explained that the revisions clarify the current application of tax.

**Committee Action/Recommendation/Direction:**

Upon motion by Dr. Chu, seconded by Ms. Mandel, the Committee unanimously approved and authorized for publication the proposed regulatory amendments. There is no operative date, and implementation will take place 30 days after approval by the Office of Administrative Law. A copy of the proposed amendments to Regulation 1705 is attached.

/s/ Betty T. Yee

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Honorable Betty T. Yee, Committee Chair

/s/ Ramon J. Hirsig

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Ramon J. Hirsig, Executive Director

BOARD APPROVED

at the September 17, 2008 Board Meeting

/s/ Diane Olson

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Diane Olson, Chief  
Board Proceedings Division

## **Proposed Amendments to Regulation 1506**

### **Regulation 1506. Miscellaneous Service Enterprises.**

#### **(a) LICENSED ARCHITECTS.**

(1) IN GENERAL. Fees paid to licensed architects for their ability to design, conceive or communicate ideas, concepts, designs, and specifications are not subject to tax. Any plans, specifications, renderings or models or other instruments of service provided by a licensed architect under a licensed architect's contract or commission are integral to the licensed architect's services and are not subject to tax. The licensed architect is the consumer of any tangible personal property, including plans, specifications, renderings or models, used or transferred in the performance of professional services notwithstanding the fact that a fee may be added to the cost of the property and separately stated on a billing to the customer. If after the completion of the contract or commission the licensed architect provides additional copies of the original plans or specifications, or any models or renderings of an existing structure, the architect is regarded as making a sale of such copies, models or renderings.

(2) LICENSED ARCHITECT. A "licensed architect" is defined under the Business and Professions Code Chapter 3, Division 3, Section 5500 as follows:

"As used in this chapter, architect means a person who is licensed to practice architecture in this state under the authority of this chapter."

A licensed architect preparing or being in responsible control of plans, specifications, and instruments of service is required to affix to those plans, specifications, and instruments of service their stamp or seal which bears the licensee's name, his or her license number, the legend "Licensed Architect" and the legend "State of California," and which shall provide a means of indicating the renewal date of the license.

(3) ARCHITECTURAL PERSPECTIVISTS AND MODELERS. Architectural perspectivists do not act as "licensed architects." Architectural perspectivists are the retailers of renderings, prints and drawings they provide to architects or other consumers and tax applies to their entire charge for such items. Modelers do not act as "licensed architects." Modelers are the retailers of models they provide to architects or other consumers, and tax applies to their entire charge for such items.

(4) Licensed architects who produce renderings, prints, drawings or models pursuant to a contract that includes professional architectural services are not retailers of the renderings, prints, drawings or models they provide pursuant to that contract for architectural services. Tax does not apply to their charge for such items.

**(b) BARBERS, BEAUTY SHOP OPERATORS, AND SHOE POLISHERS, ~~Launderers and Cleaners.~~** ~~(1) In General.~~ Barbers, beauty shop operators, and shoe polishers, ~~launderers and cleaners~~ are the consumers of the supplies and other property used in performing their services, and tax applies with respect to the sale to them of the supplies and other property. They are retailers, however, of ~~any such supplies, or of~~ used articles, or other tangible personal property, which they sell to ~~consumers~~ customers in the regular course of business, and tax applies to the gross receipts from such sales.

## **Proposed Amendments to Regulation 1506**

~~(2) Rentals. Launderers and cleaners are the consumers of linen supplies and similar articles, including towels, uniforms, coveralls, shop coats, dust cloths, and similar items, rented to others when an essential part of the rental contract is the furnishing of the recurring service of laundering or cleaning of the articles rented, and tax applies with respect to the sale to them of such articles.~~

### **(c) CLOTHES CLEANERS AND DYERS**

(1) CLOTHES CLEANING – IN GENERAL. Persons who provide clothes-cleaning services are consumers of the supplies and other materials used in performing their cleaning services, and tax applies to the sale to them of the supplies and other materials and not to their charges for such services.

(2) RENTALS. Clothes cleaners are the consumers of linen supplies and similar articles, including towels, uniforms, coveralls, shop coats, dust cloths, and similar items, rented to others when an essential part of the rental contract is the furnishing of the recurring service of laundering or cleaning of the articles rented, and tax applies with respect to the sale to them of such articles.

(3) CLOTHES DYEING – IN GENERAL. Persons who provide dyeing services are retailers, not consumers, when their charges are for the dyeing of new fabrics, garments, or other such items and tax applies to their gross receipts from such sales. Persons who dye new items are required to hold a seller's permit.

Dyers are consumers of the supplies and other materials used in dyeing used fabrics, garments, or other such items and tax applies to the sale to them of the supplies and other materials and not to their charges for their dyeing services.

(4) ALTERATION OF GARMENTS – IN GENERAL. For the purposes of this subdivision (c), alteration of garments means and includes any work performed upon new or used men's, women's and children's clothing to meet the requirements of the customer whether the work involves the addition of material to the garment, removal of material, refitting, or repairing. Alteration of garments does not mean or include the process of dyeing garments. Alteration of garments also does not mean or include work performed upon new or used personal and household items such as handbags, stuffed animals, bedding, and draperies. The application of tax to a clothes cleaner's or a dyer's charges for the alteration of personal or household items is explained in Regulation 1524.

(A) Alteration of Garments by Clothes Cleaning or Dyeing Establishments. A clothes cleaning or dyeing establishment, including wet cleaners (e.g., launderers) and dry cleaners, means and includes a clothes cleaner or dyer who (1) operates a location or locations as a pickup and delivery point for garment cleaning, or (2) provides spotting and pressing services on the premises, but not garment cleaning, or (3) operates a garment cleaning or dyeing plant on the premises.

A clothes cleaner or dyeing establishment described above is the consumer of property used or furnished in the alteration of new or used garments provided that:

1. Seventy-five percent (75%) or more of the establishment's total gross receipts represent charges for garment cleaning or dyeing services, and

## **Proposed Amendments to Regulation 1506**

2. No more than twenty percent (20%) of the establishment's total gross receipts during the preceding calendar year were from the alteration of garments.

If a clothes cleaner or dyer is not an establishment as described or does not meet the requirements of this paragraph (A), tax applies to the clothes cleaner's or the dyer's charges for the alteration of garments as explained in Regulation 1524.

**(B) Alteration of Garments by a Third Party.** When a clothes cleaner or dyer who meets the requirements of subdivision (c)(4)(A) contracts with a third party such as a tailor for the alteration of garments instead of performing such alterations itself, the clothes cleaner or dyer is a consumer, not a retailer, of the alterations provided by the third party and may not issue a resale certificate to the third party for such alterations. Tax applies to the third party's charges to the clothes cleaner or dyer for such alterations as explained in Regulation 1524.

**(5) MISCELLANEOUS SALE OF ITEMS.** Clothes cleaners and dyers, whether or not they meet the requirements of subdivision (c)(4)(A), are retailers of any supplies, used items, or other tangible personal property such as lint brushes, abandoned garments, wood hangers, or novelty items, which they sell to customers in the regular course of business, and tax applies to the gross receipts from such sales. As retailers of tangible personal property, such persons are required to hold a seller's permit.

**(ed) CIRCULATING LIBRARIES.** When circulating libraries, which are engaged in the business of renting books to others, pay tax measured by the purchase price of such books either to the person from whom the books are purchased or to the board, tax does not apply to the amount charged for the rental of such books. Such libraries are retailers of new or used books, which they sell to consumers in the regular course of business, and tax applies to the gross receipts from such sales.

**(de) DENTISTS AND DENTAL LABORATORIES.** Dentists are consumers of the materials, supplies, dental laboratory products and other tangible personal property which they use in performing their services. Tax, accordingly, applies to the sale of the tangible personal property to them.

Dental laboratories are the retailers of the plates, inlays and other products which they manufacture for dentists or other consumers. Tax applies to their entire charges for such products regardless of whether a separate charge or billing is made for materials and manufacturing services.

**(ef) GUN CLUBS.** Gun clubs are consumers, not retailers, of clay pigeons or blue rocks furnished to members or patrons in connection with trapshooting or similar sports even though the charge for the service is measured by the number of clay pigeons or blue rocks used. The tax applies with respect to the sale of such property to the clubs.

**(fg) LICENSED HEARING AID DISPENSERS.** Persons licensed as hearing aid dispensers by the Department of Consumer Affairs, Hearing Aid Dispensers Examining Committee, are consumers of hearing aids furnished or sold by them. The term "hearing aid" includes any necessary accessory or component part of the hearing aid which is fully worn on the body of the user such as cords, connector tubing, ear molds, or batteries, whether the part is sold or furnished

## **Proposed Amendments to Regulation 1506**

separately or in conjunction with the hearing aid. The term also includes replacement and repair parts. Tax applies with respect to the sale of such products to licensed hearing aid dispensers.

Tax applies to the retail sale of such products by persons who are not licensed hearing aid dispensers.

**(gh) SUMMER CAMPS.** The tax applies to gross receipts from the sale of meals or other tangible personal property at summer camps, whether operated by municipal or private corporations, or other parties. When a camp qualifies as a school or educational institution, tax, with respect to meals, applies in the same manner as to schools and educational institutions. To qualify as a school or educational institution for purposes of this regulation, the camp must conduct regularly scheduled classes, with required attendance, in charge of qualified instructors.

If a single charge is made for all of the privileges extended by the camp, a segregation must be made and the tax returned on that portion of the total charge representing taxable receipts from the sale of meals or other tangible personal property. In the absence of such a segregation, the taxable receipts from the sale of meals or other tangible personal property shall be determined by the board based on information available to it.

**(hi) TAXIDERMISTS.** Taxidermists are consumers of the materials used in repairing, stuffing and mounting skins, heads, etc., of animals, birds, fish, and the like furnished by their customers, and tax applies with respect to the sale of such property to them. If, however, a separate charge for such property is made on the invoices to the customers at the fair retail selling price, the taxidermist is the retailer of the property and tax applies to such separate charge.

Tax applies to retail sales by taxidermists of skins, heads, mountings or other tangible personal property.

### **(ij) LICENSED VETERINARIANS.**

#### **(1) DEFINITIONS. As used herein:**

**(A)** The term “licensed veterinarian” means any person licensed as a veterinarian by the California Department of Consumer Affairs, Board of Examiners in Veterinary Medicine.

**(B)** The term “drugs and medicines” includes substances or preparations intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals and which is commonly recognized as a substance or preparation intended for this use. The term includes legend drugs, pills and capsules (other than vitamins), liquid medications, injected drugs, ointments, vaccines, intravenous fluids, and medicated soaps if those soaps are available only to veterinarians. The term does not include vitamins, shampoos, pet foods, prescription diet foods, artificial diets, flea powders, and flea sprays.

**(C)** The term “professional services” includes the diagnosis and treatment of disease or trauma in animal life. It also includes the administration of drugs and medicines by means of, for example, injection, intravenous solution, or oral or bodily application.

## **Proposed Amendments to Regulation 1506**

### **(2) APPLICATION OF TAX.**

**(A)** Licensed veterinarians are consumers of drugs and medicines which they use or furnish in the performance of their professional services. Accordingly, tax does not apply to a licensed veterinarian's charges to clients for such drugs and medicines, whether or not separately stated. Licensed veterinarians are also consumers of tangible personal property, other than drugs and medicines, which they use or which they furnish to clients without a separately stated charge. Tax applies to the sales of such drugs, medicines and other items to licensed veterinarians except:

1. Operative April 1, 1996, drugs or medicines which are purchased to be administered to animal life as an additive to feed or drinking water of food animals (as defined in Regulation 1587 (18 CCR 1587), "Animal Life, Feed, Drugs and Medicines") or of non-food animals which are being held for sale in the regular course of business, and the primary purpose of the drugs or medicines is the prevention and control of disease, or

2. Operative January 1, 1997, drugs or medicines which are purchased to be administered directly (e.g., orally, by injection, or by application to the body) to food animals and the primary purpose of the drugs or medicines is the prevention or control of disease of the food animals. Veterinarians remain consumers of drugs and medicines administered directly to non-food animals.

**(B)** Licensed veterinarians are retailers of drugs and medicines which they furnish for a consideration without performing specific related professional services. Licensed veterinarians are also retailers of tangible personal property, other than drugs and medicines, which they furnish to clients for a separately stated charge. Unless otherwise exempt, tax applies to charges made by licensed veterinarians to clients for such drugs, medicines and other items. See Regulation 1587(18 CCR 1587), "Animal Life, Feed, Drugs and Medicines" for exemption for sales of feed, drugs, or medicines for certain animals. Tax applies to separately stated charges made for X-rays if the X-rays are delivered to clients.

## Proposed Amendments to Regulation 1524

### Regulation 1524. Manufacturers of Personal Property.

(a) **IN GENERAL.** Tax applies to the gross receipts from retail sales (i.e., sales to consumers) by manufacturers, producers, processors, and fabricators of tangible personal property the sale of which is not otherwise exempted. The measure of the tax is the gross receipts of, or sales price charged by, the manufacturer, producer, processor, or fabricator, from which no deduction may be taken ~~by the manufacturer~~ on account of the cost of the raw materials or other components purchased, or labor or service costs to create or produce the tangible personal property, or of any step in the manufacturing, producing, processing, or fabricating, including work performed to fit the customer's specific requirements, whether or not performed at the customer's specific request, or any other services that are a part of the sale. In addition, no deduction may be taken on account of interest paid, losses, or any other expense.

#### (b) PARTICULAR APPLICATIONS.

##### ~~(1) Alterations to New Clothing for Men, Women and Children.~~ ALTERATION OF NEW AND USED ITEMS.

~~(A) Definition of Alteration. "Alteration," as herein used, means and includes any work performed upon new clothing to meet the requirements of a customer, whether the work involves the addition of material to the garment, the removal of material from the garment, the rearranging or restyling of the garment, or any other change therein.~~

(A) Alteration of New Items means and includes any work performed upon new items such as garments, bedding, draperies, or other personal and household items to meet the requirements of the customer, whether the work involves the addition of material to the item, the removal of material from the item, the rearranging or restyling of the item, or otherwise altering the item, when such alterations result in the creation or production of a new item or constitute a step in the creation or production of a new item for the customer.

Charges for the alteration of new items are subject to tax, except as provided in subdivision (c)(4) of Regulation 1506, regardless of whether the charges for the alterations are separately stated or included in the price of the item, or whether the alterations are performed by the seller of the item or by another person. Persons engaged in the producing, processing or fabricating of new items are retailers, not consumers, of the alterations provided to the customer and are required to hold a seller's permit.

(B) Alteration of Used Items means and includes the mending, shortening or lengthening, taking in or letting out, or otherwise altering used items such as garments, bedding, draperies, or other personal and household items when such alterations merely refit or repair the item for the use for which it was created or produced.

Charges for the alteration of used items are not subject to tax. Generally, persons performing the alteration of used items are consumers, not retailers, of the supplies and materials furnished in connection with the alterations, and tax applies to the sale of the supplies and materials to such persons.

## Proposed Amendments to Regulation 1524

Except as provided in subdivision (c)(4) of Regulation 1506, persons performing the alteration of used items are retailers, not consumers, of the supplies and materials furnished in connection with the alterations when the retail value of the supplies and materials is more than 10 percent of the total charge for the alterations, or if the invoice to the customer includes a separate charge for such property. When such persons are retailers, not consumers, tax applies to the fair retail selling price of the supplies and materials to the customer.

When the retail value of the supplies and materials is more than 10 percent of the total charge to the customer, the person performing the alterations must segregate on the invoice to the customer and in its records, the fair retail selling price of the supplies and materials from the charge for the alterations. "Total charge" means the combined total of the retail value of the supplies and materials furnished or consumed as part of the alterations and the labor charges for the alterations.

### ~~—(B) Application of Tax.~~

~~—1. In General. Charges for alterations to new clothing are subject to tax. It is immaterial whether the charges for the alterations are separately stated or are included in the price of the garment. It also is immaterial whether the alterations are performed by the seller of the garment or by another person.~~

~~—(2) Alterations by Clothes Cleaning or Clothes Dyeing Establishment. A person who operates a clothes cleaning or clothes dyeing establishment is the consumer of property used or furnished in altering new and used clothing, provided that~~

~~—(A) 75 percent or more of the establishment's total gross receipts represent charges for garment cleaning or dyeing services and~~

~~—(B) No more than 20 percent of the establishment's total gross receipts during the preceding calendar year were from the alteration of new and used garments.~~

~~If both requirements are met, sales tax shall not apply to the operator's charges for alterations of new or used clothing. However, that person is a retailer of any other tangible personal property sold to consumers in the regular course of business, and sales tax shall apply to the gross receipts from those sales.~~

(32) PAINTING, POLISHING, FINISHING. Tax applies to charges for painting, polishing, and otherwise finishing tangible personal property in connection with the production of a finished product for consumers, whether the article to be finished is supplied by the customer or by the finisher. Tax does not apply to charges for painting or finishing real property.

## **Proposed amendments to Regulation 1705**

### **Regulation 1705. RELIEF FROM LIABILITY.**

**(a) IN GENERAL.** A person may be relieved from the liability for the payment of sales and use taxes, including any penalties and interest added to those taxes, when that liability resulted from the failure to make a timely return or a payment and such failure was found by the Board to be due to reasonable reliance on:

(1) Written advice given by the Board under the conditions set forth in subdivision (b) below; or

(2) Written advice in the form of an annotation or legal ruling of counsel under the conditions set forth in subdivision (d) below; or

(3) Written advice given by the Board in a prior audit of that person under the conditions set forth in subdivision (c) below. As used in this regulation, the term “prior audit” means any audit conducted prior to the current examination where the issue in question was examined.

Written advice from the Board may only be relied upon by the person to whom it was originally issued or a legal or statutory successor to that person. Written advice from the Board which was received during a prior audit of the person under the conditions set forth in subdivision (c) below, may be relied upon by the person audited or by a legal or statutory successor to that person.

The term “written advice” includes advice that was incorrect at the time it was issued as well as advice that was correct at the time it was issued, but, subsequent to issuance, was invalidated by a change in statutory or constitutional law, by a change in Board regulations, or by a final decision of a court of competent jurisdiction. Prior written advice may not be relied upon subsequent to: (1) the effective date of a change in statutory or constitutional law and Board regulations or the date of a final decision of a court of competent jurisdiction regardless that the Board did not provide notice of such action; or (2) the person receiving a subsequent writing notifying the person that the advice was not valid at the time it was issued or was subsequently rendered invalid. As generally used in this regulation, the term “written advice” includes both written advice provided in a written communication under subdivision (b) below and written advice provided in a prior audit of the person under subdivision (c) below.

#### **(b) ADVICE PROVIDED IN A WRITTEN COMMUNICATION.**

(1) Advice from the Board provided to the person in a written communication must have been in response to a specific written inquiry from the person seeking relief from liability, or from his or her representative. To be considered a specific written inquiry for purposes of this regulation, representatives must identify the specific person for whom the advice is requested. Such inquiry must have set forth and fully described the facts and circumstances of the activity or transactions for which the advice was requested.

(2) A person may write to the Board and propose a use tax reporting methodology for qualified purchases subject to use tax. If the Board concludes that the reporting method reflects the person’s use tax liability for the defined population, then the Board may write to the person approving the use of the reporting method. The approval shall be subject to certain conditions. The following conditions shall be included in the approval:

**(A)** The defined population of the purchases that will be included in the reporting method;

## **Proposed amendments to Regulation 1705**

(B) The percentage of purchases of the defined population that is subject to tax;

(C) The length of time the writing shall remain in effect;

(D) The definition of a significant or material change that will require rescinding the approved reporting method; and

(E) Other conditions as required.

The written approval of the use tax reporting methodology is void and shall not be relied upon for the purposes of Revenue and Taxation Code section 6596 if the taxpayer files a claim for refund for tax that had been reported based upon this reporting method.

**(c) WRITTEN ADVICE PROVIDED IN A PRIOR AUDIT.** Presentation of the person's books and records for examination by an auditor shall be deemed to be a written request for the audit report. If a prior audit report of the person requesting relief contains written evidence which demonstrates that the issue in question was examined, either in a sample or census (actual) review, such evidence will be considered "written advice from the Board" for purposes of this regulation. A census (actual) review, as opposed to a sample review, involves examination of 100% of the person's transactions pertaining to the issue in question. For written advice contained in a prior audit of the person to apply to the person's activity or transaction in question, the facts and conditions relating to the activity or transaction must not have changed from those which occurred during the period of operation in the prior audit. Audit comments, schedules, and other writings prepared by the Board that become part of the audit work papers which reflect that the activity or transaction in question was properly reported and no amount was due are sufficient for a finding for relief from liability, unless it can be shown that the person seeking relief knew such advice was erroneous.

**(d) ANNOTATIONS AND LEGAL RULINGS OF COUNSEL.** Advice from the Board provided to the person in the form of an annotation or legal ruling of counsel shall constitute written advice only if:

(1) The underlying legal ruling of counsel involving the fact pattern at issue is addressed to the person or to his or her representative under the conditions set forth in subdivision (b) above; or

(2) The annotation or legal ruling of counsel is provided to the person or his or her representative by the Board within the body of a written communication and involves the same fact pattern as that presented in the subject annotation or legal ruling of counsel.

**(e) TRADE OR INDUSTRY ASSOCIATIONS OR FRANCHISORS.** A trade or industry association requesting advice on behalf of its member(s) must identify and include the specific member name(s) for whom the advice is requested for relief from liability under this regulation. A franchisor requesting advice on behalf of its franchisee(s) must identify and include the specific franchisee name(s) for whom the advice is requested for relief from liability under this regulation.

For an identified trade or industry member or franchisee to receive relief based on advice provided in the written communication to the trade or industry association or franchisor, the activity or transactions in question must involve the same facts and circumstances as those presented in the written inquiry by the association or franchisor.

## REGULATION HISTORY

**TYPE OF REGULATIONS:** Sales and Use Tax

**REGULATION:** 1705

**TITLE:** *Relief from Liability*

**PREPARATION:** Lynn Whitaker/Cecilia Watkins

**LEGAL CONTACT:** Christine Bisauta/Robert Tucker

Proposed revisions to Regulation 1705 clarify that the provisions of the regulation apply when an identified franchisee relies on incorrect written advice provided to its franchisor. The proposed revisions also explain that in order to qualify for relief, the transactions in question must involve the same facts and circumstances as those presented in the franchisor's written request for relief.

### HISTORY OF AMENDMENTS:

09-16-08: Business Taxes Committee (BTC) Meeting

07-15-08: Second Interested Parties Meeting

05-20-08: First Interested Parties Meeting

03-10-08: Topic Placed on BTC Calendar

Sponsor: None

Support: None

Oppose: None



STATE BOARD OF EQUALIZATION

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JUDY CHU, Ph.D.  
Fourth District, Los Angeles

JOHN CHIANG  
State Controller

RAMON J. HIRSIG  
Executive Director

September 5, 2008

Dear Interested Party:

Enclosed are the Agenda, Issue Paper, and Revenue Estimate for the September 16, 2008 Business Taxes Committee meeting. This meeting will address the proposed amendments to Regulation 1705, *Relief from Liability*.

Action 1 on the Agenda concerns whether Regulation 1705 should be revised to clarify when a franchisee is relieved from the liability to pay tax based on erroneous advice provided to its franchisor.

If you are interested in other topics to be considered by the Business Taxes Committee, you may refer to the "Business Taxes Committee" page on the Board's Internet web site (<http://www.boe.ca.gov/meetings/btcommittee.htm>) for copies of Committee discussion or issue papers, minutes, a procedures manual, and a materials preparation and review schedule arranged according to subject matter and meeting date.

Thank you for your input on these issues and I look forward to seeing you at the Business Taxes Committee meeting at **9:30 a.m. on September 16, 2008** in Room 121 at the address shown above.

Sincerely,

Randie L. Henry, Deputy Director  
Sales and Use Tax Department

RLH:llw

Enclosures

cc: (all with enclosures)

Honorable Judy Chu, Ph.D., Chair, Fourth District

Honorable Betty T. Yee, Vice Chairwoman, First District (MIC 71)

Honorable Bill Leonard, Member, Second District (MIC 78)

Honorable Michelle Steel, Member, Third District

Honorable John Chiang, State Controller, c/o Ms. Marcy Jo Mandel (via e-mail)

Mr. Steve Shea, Board Member's Office, Fourth District (via e-mail)

Mr. Mark Ibele, Board Member's Office, Fourth District (via e-mail)

Mr. Alan LoFaso, Board Member's Office, First District (via e-mail)

Ms. Sabina Crocette, Board Member's Office, First District (via e-mail)

Mr. Gary Qualset, Board Member's Office, First District (via e-mail)

Ms. Mengjun He, Board Member's Office, First District (via e-mail)

Ms. Amber Kemp, Board member's Office, First District (via e-mail)

Mr. Lee Williams, Board Member's Office, Second District (via e-mail)

Mr. Ken Maddox, Board Member's Office, Third District (via e-mail)

Mr. Neil Shah, Board Member's Office, Third District (via e-mail)

Ms. Elizabeth Maeng, Board Member's Office, Third District (via e-mail)

Ms. Christina Rueck, Board Member's Office, Third District (via e-mail)

Ms. Melanie Darling, State Controller's Office (via e-mail)

Mr. Ramon J. Hirsig (via e-mail)

Ms. Kristine Cazadd (via e-mail)

Ms. Randie L. Henry (via e-mail)

Mr. Jeff Vest (via e-mail)

Mr. Robert Lambert (via e-mail)

Mr. Randy Ferris (via e-mail)

Mr. David Levine (via e-mail)

Mr. Tim Treichelt (via e-mail)

Ms. Christine Bisauta (via e-mail)

Mr. Robert Tucker (via e-mail)

Mr. Todd Gilman (via e-mail)

Ms. Laureen Simpson (via e-mail)

Mr. Bill Benson (via e-mail)

Ms. Freda Orendt (via e-mail)

Mr. Stephen Rudd (via e-mail)

Mr. Robert Buntjer (via e-mail)

Mr. Jeff McGuire (via e-mail)

Mr. James Kuhl (via e-mail)

Mr. Geoffrey E. Lyle (via e-mail)

Ms. Leila Hellmuth (via e-mail)

Ms. Lynn Whitaker (via e-mail)

Ms. Cecilia Watkins (via e-mail)

Formal Issue Paper Number 08-008

**Agenda**  
**Page 1 of 3**

**AGENDA — September 16, 2008 Business Taxes Committee Meeting**  
**Proposed revisions to Regulation 1705, *Relief from Liability*, regarding RTC section 6596 relief to franchisees**  
**based on written advice provided to franchisors**

<b>Action 1 — Proposed revisions to Regulation 1705(e)</b>	<p><b>Regulation 1705. RELIEF FROM LIABILITY</b></p> <p><b>(a) IN GENERAL.</b> A person may be relieved from the liability for the payment of sales and use taxes, including any penalties and interest added to those taxes, when that liability resulted from the failure to make a timely return or a payment and such failure was found by the Board to be due to reasonable reliance on:</p> <ul style="list-style-type: none"> <li>(1) Written advice given by the Board under the conditions set forth in subdivision (b) below; or</li> <li>(2) Written advice in the form of an annotation or legal ruling of counsel under the conditions set forth in subdivision (d) below; or</li> <li>(3) Written advice given by the Board in a prior audit of that person under the conditions set forth in subdivision(c) below. As used in this regulation, the term “prior audit” means any audit conducted prior to the current examination where the issue in question was examined.</li> </ul> <p>Written advice from the Board may only be relied upon by the person to whom it was originally issued or a legal or statutory successor to that person. Written advice from the Board which was received during a prior audit of the person under the conditions set forth in subdivision (c) below, may be relied upon by the person audited or by a legal or statutory successor to that person.</p> <p>The term “written advice” includes advice that was incorrect at the time it was issued as well as advice that was correct at the time it was issued, but, subsequent to issuance, was invalidated by a change in statutory or constitutional law, by a change in Board regulations, or by a final decision of a court of competent jurisdiction. Prior written advice may not be relied upon subsequent to: (1) the effective date of a change in statutory or constitutional law and Board regulations or the date of a final decision of a court of competent jurisdiction regardless that the Board did not provide notice of such action; or (2) the person receiving a subsequent writing notifying the person that the advice was not valid at the time it was issued or was subsequently rendered invalid. As generally used in this regulation, the term “written advice” includes both written advice provided in a written communication under subdivision (b) below and written advice provided in a prior audit of the person under subdivision (c) below.</p> <p><b>(b) ADVICE PROVIDED IN A WRITTEN COMMUNICATION.</b></p> <ul style="list-style-type: none"> <li>(1) Advice from the Board provided to the person in a written communication must have been in response to a specific written inquiry from the person seeking relief from liability, or from his or her representative. To be considered a specific written inquiry for purposes of this regulation, representatives must identify the specific person for whom the advice is requested. Such inquiry must have set forth and fully described the facts and circumstances of the activity or transactions for which the advice was requested.</li> <li>(2) A person may write to the Board and propose a use tax reporting methodology for qualified purchases subject to use tax. If the Board concludes that the reporting method reflects the person’s use tax liability for the defined population, then the Board may write to the person approving the use of the reporting method. The approval shall be subject to certain conditions. The following conditions shall be included in the approval: <ul style="list-style-type: none"> <li>(A) The defined population of the purchases that will be included in the reporting method;</li> <li>(B) The percentage of purchases of the defined population that is subject to tax;</li> </ul> </li> </ul>
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**AGENDA — September 16, 2008 Business Taxes Committee Meeting**  
**Proposed revisions to Regulation 1705, *Relief from Liability*, regarding RTC section 6596 relief to franchisees**  
**based on written advice provided to franchisors**

- (C) The length of time the writing shall remain in effect;
- (D) The definition of a significant or material change that will require rescinding the approved reporting method; and
- (E) Other conditions as required.

The written approval of the use tax reporting methodology is void and shall not be relied upon for the purposes of Revenue and Taxation Code section 6596 if the taxpayer files a claim for refund for tax that had been reported based upon this reporting method.

**(c) WRITTEN ADVICE PROVIDED IN A PRIOR AUDIT.** Presentation of the person's books and records for examination by an auditor shall be deemed to be a written request for the audit report. If a prior audit report of the person requesting relief contains written evidence which demonstrates that the issue in question was examined, either in a sample or census (actual) review, such evidence will be considered "written advice from the Board" for purposes of this regulation. A census (actual) review, as opposed to a sample review, involves examination of 100% of the person's transactions pertaining to the issue in question. For written advice contained in a prior audit of the person to apply to the person's activity or transaction in question, the facts and conditions relating to the activity or transaction must not have changed from those which occurred during the period of operation in the prior audit. Audit comments, schedules, and other writings prepared by the Board that become part of the audit work papers which reflect that the activity or transaction in question was properly reported and no amount was due are sufficient for a finding for relief from liability, unless it can be shown that the person seeking relief knew such advice was erroneous.

**(d) ANNOTATIONS AND LEGAL RULINGS OF COUNSEL.** Advice from the Board provided to the person in the form of an annotation or legal ruling of counsel shall constitute written advice only if:

- (1) The underlying legal ruling of counsel involving the fact pattern at issue is addressed to the person or to his or her representative under the conditions set forth in subdivision (b) above; or
- (2) The annotation or legal ruling of counsel is provided to the person or his or her representative by the Board within the body of a written communication and involves the same fact pattern as that presented in the subject annotation or legal ruling of counsel.

**(e) TRADE OR INDUSTRY ASSOCIATIONS OR FRANCHISORS.** A trade or industry association requesting advice on behalf of its member(s) must identify and include the specific member name(s) for whom the advice is requested for relief from liability under this regulation. A franchisor requesting advice on behalf of its franchisee(s) must identify and include the specific franchisee name(s) for whom the advice is requested for relief from liability under this regulation.

For an identified trade or industry member or franchisee to receive relief based on advice provided in the written communication to the trade or industry association or franchisor, the activity or transactions in question must involve the same facts and circumstances as those presented in the written inquiry by the association or franchisor.

Issue Paper Number 08-008

- ☐ Board Meeting
- ☒ Business Taxes Committee
- ☐ Customer Services and  
Administrative Efficiency  
Committee
- ☐ Legislative Committee
- ☐ Property Tax Committee
- ☐ Other



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## Proposed revisions to Regulation 1705, *Relief from Liability*, regarding RTC section 6596 relief to franchisees based on written advice provided to franchisors

### I. Issue

Should Regulation 1705, *Relief from Liability*, be revised to explain when a franchisee is relieved from the liability to pay tax based on erroneous written advice provided to its franchisor?

### II. Alternative 1 - Staff Recommendation

Staff recommends revising Regulation 1705 to clarify that the provisions of the regulation apply when an identified franchisee relies on incorrect written advice provided to its franchisor. The proposed revisions also explain that in order to qualify for relief, the transactions in question must involve the same facts and circumstances as those presented in the franchisor's written request for relief.

Staff's proposed revisions are attached as Exhibits 2.

### III. Alternative 2 - Other Alternative Considered

Do not revise Regulation 1705.

**FORMAL ISSUE PAPER**

Issue Paper Number 08-008

**IV. Background**

Revenue and Taxation Code section (Section) 6596 provides relief from tax, interest, and penalty charges due on a transaction if the Board determines that the taxpayer failed to pay tax because it reasonably relied on erroneous written advice from the Board. For relief to apply, the Board must have received a written request for advice on the transaction, the request must have identified the taxpayer to whom the advice applied, and the request must have fully described the facts and circumstances of the transaction.

Section 6596 subdivision (d) states that, “[o]nly the person making the written request shall be entitled to rely on the board’s written advice to that person.” Accordingly, taxpayers cannot obtain relief by relying on a written opinion given to another business, even if the transactions are similar. However, a taxpayer may rely on advice given to the taxpayer’s representative provided that the representative identifies the person for whom the advice is requested.

Regulation 1705, *Relief from Liability*, is based upon Section 6596 and explains its provisions in more detail. In 1999, Regulation 1705 was amended to extend Section 6596 relief to trade or industry association members when an association requests written advice on behalf of its members. In order to obtain relief under Section 6596, the members must be identified in the association’s request for advice.

Under discussion is whether Regulation 1705 should be revised to explain that similar relief applies to franchisees and franchisors. This issue was brought up by an interested party at the September 12, 2007, public hearing on the proposed Board of Equalization Rules for Tax Appeals. Staff met with interested parties on May 20, 2008, and July 15, 2008, to discuss the proposed changes. The Business Taxes Committee is scheduled to discuss this topic at the September 16, 2008, Committee meeting.

**V. Discussion**

**Written advice provided in response to a franchisor’s written request.** Regulation 1705(b)(1) addresses relief for taxpayers when written advice is requested by the taxpayer’s representative and the taxpayer is specifically identified in the written inquiry. In view of this, staff believes that under the current provisions of Regulation 1705, a franchisee could be relieved of the liability for tax if its franchisor requested written advice and specifically identified the franchisee. To provide clarity in the regulation, however, staff proposes revising subdivision (e) of Regulation 1705 to specifically include franchisors and franchisees. The proposed revisions also explain that in order to qualify for relief, the activity or transactions in question must involve the same facts and circumstances as those presented in the written request for relief from the association or franchisor. (See Exhibit 2.)

There has been some confusion regarding the retroactive effect of the proposed revisions. Since the revisions only clarify the existing provisions of Section 6596, the revisions would apply retroactively if approved by the Board and the Office of Administrative Law. Relief under the regulation would apply as it currently does; relief is based on the day the written advice was given to the taxpayer requesting relief. Thus, franchisees identified in a request can rely on the written response to that request. If subsequent letters are sent identifying new franchisees, those new franchisees would be eligible for relief based on the date of the Board’s subsequent response – the new franchisees would not be given relief back to the date of the Board’s first response. In other words, taxpayers cannot rely on advice *before* it is given to them by the Board. The following example illustrates how relief would apply:

**FORMAL ISSUE PAPER**

Issue Paper Number 08-008

January 2008

A franchisor requests advice in writing asking if a particular labor charge is taxable. The franchisor identifies franchisees #1 - 20 in the request.

March 2008

A Board auditor replies in writing that the labor charge in question is exempt from tax. The auditor sends a copy of the letter to franchisees #1 – 20.

June 2008

The franchisor realizes that franchisee #21 was not included in the January request, even though #21 was operating in January. In addition, new franchises #22 - 24 have opened in California. The franchisor writes to the Board identifying franchisees #21 – 24 and requests a written opinion regarding the application of tax to the same labor charge previously discussed. The franchisor refers to the letter written in January 2008 and the advice given in March 2008.

July 2008

A Board auditor replies in writing that the labor charge is not subject to tax. The auditor sends a copy of the letter to franchisees #21 - 24.

October 2008

Franchisee #21 is audited. The labor charge previously written about is examined and found to be a taxable transaction.

The auditor determines that all franchisees underreported tax because they relied on the written opinions issued in March 2008 and July 2008. Franchisees #1 - 20 are provided relief under Section 6596 beginning March 2008; franchisees #21 - 24 are provided relief beginning July 2008.

At the second interested parties meeting, interested parties commented that while they followed the logic in the above example, a common sense approach would allow all franchisees relief back to March 2008 since the Board's reply was the same in March and July. Staff believes allowing relief back to a date prior to the taxpayer (franchisee) receiving advice from the Board would be beyond the provisions of Section 6596.

**Franchisors disseminating information to their franchisees.** At the first interested parties meeting, it was noted that franchisors use many different methods to communicate with their franchisees. For example, franchisors may provide Internet bulletin boards or chat rooms as a way to share information between the franchisees. Staff would like to clarify that this type of communication would not qualify for relief under Section 6596. As previously discussed, relief under Section 6596 is limited to the incorrect information provided in writing, from the Board, in response to a written request. In order for relief to apply to franchisees, the franchisor should identify its franchisees in a written request sent to the Board. The Board will send a copy of its response to all identified franchisees, thus providing them with written advice. If that advice is later determined to be incorrect, the Board will have a record of who the incorrect advice was sent to and can send a letter correcting that advice.

**Written advice provided in a prior audit.** The term “written advice” includes written comments provided in audit working papers. Regulation 1705(a)(3) explains that written advice provided in the audit report may only be relied upon by the person to whom it was originally issued or a legal or statutory successor to that person. Thus, written advice provided in the audit of a franchisor would only provide relief from liability for that franchisor (or a legal or statutory successor to that franchisor). Although

**FORMAL ISSUE PAPER**

Issue Paper Number 08-008

franchisees may have similar transactions, they are not a party to the audit and are not provided relief based on reliance on the written information in the audit.

**VI. Alternative 1 - Staff Recommendation****A. Description of Alternative 1**

Staff recommends revising Regulation 1705 to clarify that the provisions of the regulation apply when an identified franchisee relies on incorrect written advice provided to its franchisor. The proposed revisions also explain that in order to qualify for relief, the transactions in question must involve the same facts and circumstances as those presented in the franchisor's written request for relief.

**B. Pros of Alternative 1**

Although Regulation 1705 currently explains how relief applies when written advice is requested by a taxpayer's representative, the proposed changes specifically explain how identified franchisees can request section 6596 relief based on written advice provided to their franchisor. Franchisor and franchisee may not realize they are covered by the current regulation unless those specific terms are included.

**C. Cons of Alternative 1**

None.

**D. Statutory or Regulatory Change for Alternative 1**

No statutory change is required. However, staff's recommendation does require the amendment of Regulation 1705.

**E. Operational Impact of Alternative 1**

Staff will notify taxpayers of the amendments to Regulation 1705 through an article in the Tax Information Bulletin (TIB).

**F. Administrative Impact of Alternative 1****1. Cost Impact**

The workload associated with publishing the regulation and TIB is considered routine. Any corresponding cost would be absorbed within the Board's existing budget.

**2. Revenue Impact**

None. See Revenue Estimate (Exhibit 1).

**G. Taxpayer/Customer Impact of Alternative 1**

Overall, taxpayer impact is minimal as the proposed revisions do not change the current application of tax. However, clarification in the regulation will let franchisors know that they can request written advice on behalf of their franchisees and that those identified franchisees can request relief from liability if the written information is later found to be incorrect.

**FORMAL ISSUE PAPER**

Issue Paper Number 08-008

**H. Critical Time Frames of Alternative 1**

Implementation will take place 30 days following approval of the regulation by the State Office of Administrative Law.

**VII. Alternative 2 – No Revisions**

**A. Description of Alternative 2**

Do not revise Regulation 1705.

**B. Pros of Alternative 2**

The proposed revisions do not change the current application of tax, and therefore could be viewed as unnecessary. In addition, not revising Regulation 1705 would avoid the workload involved in processing and publicizing the revisions.

**C. Cons of Alternative 2**

Although staff believes that franchisees can request section 6596 relief under the current provisions of Regulation 1705, the regulation does not expressly state that identified franchisees can request section 6596 relief based on written advice provided to their franchisor. Not revising Regulation 1705 will result in a continued lack of clarity in this area.

**D. Statutory or Regulatory Change for Alternative 2**

None.

**E. Operational Impact of Alternative 2**

None.

**F. Administrative Impact of Alternative 2**

**1. Cost Impact**

None.

**2. Revenue Impact**

None. See Revenue Estimate (Exhibit 1).

**G. Taxpayer/Customer Impact of Alternative 2**

Without clarifying language in the regulation, franchisees may not understand that they may qualify for relief under section 6596 for incorrect written information that was provided to their franchisor. In addition, franchisors may not know that they can request written advice on behalf of their franchisees.

**H. Critical Time Frames of Alternative 2**

None.

**Preparer/Reviewer Information**

Prepared by: Tax Policy Division, Sales and Use Tax Department

Current as of: August 27, 2008

**REVENUE ESTIMATE**

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION



BOARD OF EQUALIZATION  
**REVENUE ESTIMATE**

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**Proposed revisions to Regulation 1705, *Relief from Liability*,  
regarding RTC section 6596 relief to franchisees based on  
written advice provided to franchisors**

**Alternative 1 – Staff Recommendation**

Staff recommends revising Regulation 1705 to clarify that the provisions of the regulation apply when an identified franchisee relies on incorrect written advice provided to its franchisor. The proposed revisions also explain that in order to qualify for relief, the transactions in question must involve the same facts and circumstances as those presented in the franchisor's written request for relief.

**Alternative 2 - Other Alternative Considered**

Do not revise Regulation 1705.

**Background, Methodology, and Assumptions**

**Alternative 1 – Staff Recommendation**

There is nothing in staff recommendation that would impact sales and use tax revenue. Staff recommendation clarifies that the provisions of the regulation apply when an identified franchisee relies on incorrect written advice provided to its franchisor. Staff recommendation further explains that in order to qualify for relief, the transactions in question must involve the same facts and circumstances as those presented in the franchisor's written request for relief.

**Alternative 2 - Other Alternative – do not revise Regulation 1705**

There is nothing in the alternative 2 that would impact sales and use tax revenue.

Revenue Estimate

**Revenue Summary**

Alternative 1 – staff recommendation does not have a revenue impact.

Alternative 2 – alternative 2 does not have a revenue impact.

**Preparation**

Mr. Bill Benson, Jr., Acting Manager, Research and Statistics Section, Legislative and Research Division, prepared this revenue estimate. Mr. Jeff McGuire, Tax Policy Manager, Sales and Use Tax Department, reviewed this revenue estimate. For additional information, please contact Mr. Benson at 916-445-0840.

Current as of August 27, 2008.

**Regulation 1705. RELIEF FROM LIABILITY.**

Reference: Section 6596, Revenue and Taxation Code.

**(a) IN GENERAL.** A person may be relieved from the liability for the payment of sales and use taxes, including any penalties and interest added to those taxes, when that liability resulted from the failure to make a timely return or a payment and such failure was found by the Board to be due to reasonable reliance on:

- (1) Written advice given by the Board under the conditions set forth in subdivision (b) below; or
- (2) Written advice in the form of an annotation or legal ruling of counsel under the conditions set forth in subdivision (d) below; or
- (3) Written advice given by the Board in a prior audit of that person under the conditions set forth in subdivision (c) below. As used in this regulation, the term "prior audit" means any audit conducted prior to the current examination where the issue in question was examined.

Written advice from the Board may only be relied upon by the person to whom it was originally issued or a legal or statutory successor to that person. Written advice from the Board which was received during a prior audit of the person under the conditions set forth in subdivision (c) below, may be relied upon by the person audited or by a legal or statutory successor to that person.

The term "written advice" includes advice that was incorrect at the time it was issued as well as advice that was correct at the time it was issued, but, subsequent to issuance, was invalidated by a change in statutory or constitutional law, by a change in Board regulations, or by a final decision of a court of competent jurisdiction. Prior written advice may not be relied upon subsequent to: (1) the effective date of a change in statutory or constitutional law and Board regulations or the date of a final decision of a court of competent jurisdiction regardless that the Board did not provide notice of such action; or (2) the person receiving a subsequent writing notifying the person that the advice was not valid at the time it was issued or was subsequently rendered invalid. As generally used in this regulation, the term "written advice" includes both written advice provided in a written communication under subdivision (b) below and written advice provided in a prior audit of the person under subdivision (c) below.

**(b) ADVICE PROVIDED IN A WRITTEN COMMUNICATION.**

(1) Advice from the Board provided to the person in a written communication must have been in response to a specific written inquiry from the person seeking relief from liability, or from his or her representative. To be considered a specific written inquiry for purposes of this regulation, representatives must identify the specific person for whom the advice is requested. Such inquiry must have set forth and fully described the facts and circumstances of the activity or transactions for which the advice was requested.

(2) A person may write to the Board and propose a use tax reporting methodology for qualified purchases subject to use tax. If the Board concludes that the reporting method reflects the person's use tax liability for the defined population, then the Board may write to the person approving the use of the reporting method. The approval shall be subject to certain conditions. The following conditions shall be included in the approval:

- (A) The defined population of the purchases that will be included in the reporting method;
- (B) The percentage of purchases of the defined population that is subject to tax;
- (C) The length of time the writing shall remain in effect;
- (D) The definition of a significant or material change that will require rescinding the approved reporting method; and
- (E) Other conditions as required.

The written approval of the use tax reporting methodology is void and shall not be relied upon for the purposes of Revenue and Taxation Code section 6596 if the taxpayer files a claim for refund for tax that had been reported based upon this reporting method.

**(c) WRITTEN ADVICE PROVIDED IN A PRIOR AUDIT.** Presentation of the person's books and records for examination by an auditor shall be deemed to be a written request for the audit report. If a prior audit report of the person requesting relief contains written evidence which demonstrates that the issue in question was examined, either in a sample or census (actual) review, such evidence will be considered "written advice from the Board" for purposes of this regulation. A census (actual) review, as opposed to a sample review, involves examination of 100% of the person's transactions pertaining to the issue in question. For written advice contained in a prior audit of the person to apply to the person's activity or transaction in question, the facts and conditions relating to the activity or transaction must not have changed from those which occurred during the period of operation in the prior audit. Audit

comments, schedules, and other writings prepared by the Board that become part of the audit work papers which reflect that the activity or transaction in question was properly reported and no amount was due are sufficient for a finding for relief from liability, unless it can be shown that the person seeking relief knew such advice was erroneous.

**(d) ANNOTATIONS AND LEGAL RULINGS OF COUNSEL.** Advice from the Board provided to the person in the form of an annotation or legal ruling of counsel shall constitute written advice only if:

(1) The underlying legal ruling of counsel involving the fact pattern at issue is addressed to the person or to his or her representative under the conditions set forth in subdivision (b) above; or

(2) The annotation or legal ruling of counsel is provided to the person or his or her representative by the Board within the body of a written communication and involves the same fact pattern as that presented in the subject annotation or legal ruling of counsel.

**(e) TRADE OR INDUSTRY ASSOCIATIONS OR FRANCHISORS.** A trade or industry association requesting advice on behalf of its member(s) must identify and include the specific member name(s) for whom the advice is requested for relief from liability under this regulation. A franchisor requesting advice on behalf of its franchisee(s) must identify and include the specific franchisee name(s) for whom the advice is requested for relief from liability under this regulation.

For an identified trade or industry member or franchisee to receive relief based on advice provided in the written communication to the trade or industry association or franchisor, the activity or transactions in question must involve the same facts and circumstances as those presented in the written inquiry by the association or franchisor.

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

SEPTEMBER 16, 2008

BUSINESS TAXES COMMITTEE MEETING

Reported by: Juli Price Jackson

No. CSR 5214

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P R E S E N T

For the Board  
of Equalization:

Betty T. Yee  
Chair

Judy Chu  
Member

Bill Leonard  
Member

Michelle Steel  
Member

Marcy Jo Mandel  
Appearing for John  
Chiang, State Controller  
(per Government Code  
Section 7.9)

Diane G. Olson  
Chief, Board  
Proceedings Division

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1

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## INDEX OF ITEMS

3

4

ITEM NO.

PAGE

5

1

3

6

2

22

7

8

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9

10

## INDEX OF SPEAKERS

11

12

NAME

PAGE

13

14

PAUL CHOE

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LAWRENCE LIM

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1 450 N STREET  
2 SACRAMENTO, CALIFORNIA  
3 SEPTEMBER 16, 2008

4 ---oOo---

5 DR. CHU: I'd like to call the meeting of the  
6 Board of Equalization to order.

7 If we can start with your Business Taxes  
8 Committee?

9 And Ms. Yee will conduct the meeting.

10 MS. YEE: Thank you very much, Madam  
11 Chairwoman.

12 Could everyone please take a seat?

13 Thank you. Good morning, Members. We have two  
14 items on the Business Committee -- Business Taxes  
15 Committee agenda.

16 First item is proposed changes to  
17 Regulations 1506 and 1524, clarifying the application of  
18 tax to alteration charges.

19 Mr. McGuire?

20 MR. MC GUIRE: Good morning, I'm Jeff McGuire  
21 with the Sales and Use Tax Department.

22 With me is Bob Tucker of our Legal Department.

23 As Ms. Yee mentioned, we have two agenda items  
24 for your consideration today that are really just  
25 involving clarifications and not any changes in our law  
26 or existing practice.

27 The first item involves proposed revisions to  
28 Regulation 1506, which is miscellaneous service

1 enterprises, and Regulation 1524, which is manufacturers  
2 of personal property. Both of those are regarding the  
3 application of tax to alterations of new and used  
4 clothing.

5 Alternative 1, which is recommended by staff  
6 and supported by industry, would modify the regulations  
7 to better clarify the application of tax to clothes  
8 cleaners and dyers as it relates to their cleaning,  
9 dying and alteration activities.

10 Alternative 2 would make no changes to the  
11 regulations.

12 So, we respectfully request your approval of  
13 one of these alternatives and then your authorization to  
14 publish any approved changes to the regulations.

15 And I believe we do have a some speakers.

16 MS. YEE: Great, thank you very much.

17 We do have two speakers.

18 Will Mr. Lawrence Lim and Mr. Paul Choe please  
19 come forward?

20 Good morning.

21 MR. LIM: Good morning.

22 MR. CHOE: Good morning.

23 MS. YEE: If you will each introduce yourselves  
24 for the record, you have two minutes each.

25 ---o0o---

26 PAUL CHOE

27 ---o0o---

28 MR. CHOE: Good morning, Madam Chairwoman and

1 Honorable Members. My name is Paul Choe and I represent  
2 the Korean Dry Cleaners and Laundry Association.

3 Thank you for allowing me to speak to your  
4 committee.

5 The EPA has been making changes to the  
6 regulation for the dry cleaners. They can be burdensome  
7 for small dry cleaners, especially in the tough economy.

8 So, when -- excuse me, when the Board of  
9 Equalization proposed the change to the regulation  
10 affecting dry cleaners, we were concerned. We attended  
11 the interested parties meeting and your staff explained  
12 that the changes were not new, but were clarification of  
13 existing law.

14 However, the requirements in the law for dry  
15 cleansers in order to be considered consumer of  
16 alterations of new and used garments is just still  
17 confusing.

18 I am referring the requirement that the dry  
19 cleaner's total gross receipt has to be 75 percent or  
20 more from the clothes cleaning and 20 percent or less of  
21 the total gross received is from the alternation of new  
22 and used garments.

23 Although most of the dry cleaners meet this  
24 requirement it is just as confusing to most of our  
25 members to understand this concept. Perhaps the Board  
26 can conduct an educational outreach for our members.

27 The other concern we have is the requirement to  
28 hold a seller's permit. If we make the a small number

1 of sales, I was informed that a seller's permit is  
2 required if we make more than two sales of tangible  
3 items a year.

4 Most of the sales made by dry cleaners are of  
5 tangible personal property, like lint tapes or collar  
6 stays.

7 MS. RICHMOND: Time has expired.

8 MS. MANDEL: Let him finish.

9 MR. CHOE: Are made for the convenience of the  
10 customers. Most dry cleaners make very little money, if  
11 any, from such sales. However, the time and expense to  
12 file for returns for such small amounts adds extra  
13 burden to our members.

14 We respectfully ask the Members of the Board to  
15 provide a solution. Of course, we can ask our members  
16 to stop selling these items. However, since these items  
17 are sold as a convenience to the customers, a small  
18 number of sales inevitable.

19 MS. YEE: Mr. Choe, your time has expired, but  
20 it sounds like what you are requesting is for to us  
21 acknowledge some diminimus de minimis level of activity?

22 MR. CHOE: Yes, I'd like to ask the Board to  
23 provide low dollar exemption, like annual gross like  
24 \$400.

25 MS. YEE: Okay. Ms. Mandel?

26 MS. MANDEL: It sounded like there was two  
27 things. One was education to clarify the 75 percent/20  
28 percent gross receipts tests that are in the statute and

1 repeated --

2 MR. CHOE: Yes.

3 MS. MANDEL: -- which I actually had had some  
4 questions for staff on. So, that sounds like an  
5 educational piece so that the cleaners understand how to  
6 apply it and determine whether there are alterations.

7 The second piece is the need for a seller's  
8 permit with respect to items that the cleaners sell,  
9 like, you know, lint rollers and other items that they  
10 sell that would be subject to holding a seller's permit  
11 and concern about the time, expense and difficulty of  
12 filing -- registering and filing sales tax returns for  
13 what's a very small part of their business.

14 And they either, I guess, wouldn't carry things  
15 that their customers might expect or are looking for  
16 some type of assistance, if there is any, under the law,  
17 or should be under the law to deal with what they view  
18 as a de minimis -- a very de minimis part of their  
19 business; is that correct?

20 MR. CHOE: Yes.

21 MS. YEE: Okay. Very good, thank you.

22 Let me have Mr. Lim address us for two minutes  
23 and then I'll have the staff respond to your concerns.

24 MR. LIM: I need a little bit more than two  
25 minutes.

26 MS. YEE: Okay.

27 MR. LIM: I will try to --

28 MS. YEE: Okay.

1                                   LAWRENCE LIM

2                                   ---o0o---

3                   MR. LIM: Good morning to the Chairwoman and  
4 Member of the Board. I'm Lawrence Lim, Chairman of the  
5 Korean American Cleaners Association of California.

6                   On behalf of our members, thanks for providing  
7 this forum for discussion. I would like to thank the  
8 Member -- I am sorry, the first I'd like to discuss  
9 about the sale of garment-related cleaning supplies and  
10 accessories. These are specialized merchandise, not  
11 regularly available for sale at the mass marketing  
12 except for neckties. While selling neckties can be  
13 viewed as regular sales, sales of garment-related  
14 cleaning supplies and accessories is to provide  
15 additional values and service to our existing product.  
16 This helps dry cleaners to stand out and provide further  
17 convenience for the customers.

18                  For example, a lint removal and collar stays  
19 for a man's shirt are often given out as gift or  
20 complimentary service, including a collar expander and  
21 sweater comb as well.

22                  I brought some of the products with me today  
23 and if any of the Board Members would like to see them,  
24 they can pass down.

25                  The most of these items cost 1 to \$2 to  
26 purchase but since they are not free, most cleaners may  
27 sell them within 2 to \$3 and for limited customers.  
28 Those items are provided as complimentary items. During

1 the course of the month, a number of the these items are  
2 sold at most cleaners are minuscule and rarely  
3 contribute significantly to the overall sales.

4 Even if sales from these items is not small,  
5 the applying sales tax on them and producing related  
6 forms and paperwork does not make sense because time and  
7 manpower needed to produce those paperwork will cost far  
8 more than profit from those sales.

9 Those -- it makes sense to simply prohibit the  
10 sales of these items at the dry cleaners.

11 MS. RICHMOND: Time has expired.

12 MR. LIM: The only problem is that many  
13 customer who may seek these items will not have easy  
14 access or convenience to find them at mass markets.

15 It's also interesting to note why mass grocery  
16 and convenience stores -- the markets do not carry these  
17 specialized. It's possible that these items are not  
18 highly sought after and do not produce the sales that  
19 justify purchasing and stocking them in the first place.

20 When dry cleaners purchase them, these items,  
21 they are purchased as wholesale, but regular sales. We  
22 already pay sales tax on these items. The State  
23 collects the sales tax when dry cleaners buy them. If  
24 we're imposing and collecting additional sales tax on  
25 needed to please consider setting off the point.

26 For example, annual sales of the \$600 or less,  
27 they should exempt the cleaners from processing and  
28 reporting sales tax and obtaining seller's permit.

1           Second, I'd like to discuss about the sales tax  
2 for alteration services. For most of dry cleaners an  
3 alteration and sales of garment-related accessories are  
4 not main matter of the revenues, but additional way to  
5 provide convenience and improving existing service for  
6 our customers.

7           But distinction be made regarding alteration  
8 service provided by the dry cleaners and the alteration  
9 only shops. We only perform simple basic alteration  
10 work, such as stitching button, hemming, shortening  
11 pants, waist adjustment and patching.

12           Alteration only or tailor shop go far beyond  
13 that rudimentary repair and stitching work. This is  
14 because dry cleaners can not offer to dedicate too many  
15 resources to alteration work since the main revenue  
16 stream is to dry cleaning and launder.

17           Providing good customer service, keeping track  
18 of the incoming clothes and packaging them back into  
19 finished produce -- products are not easy task.  
20 Alteration work is a small part of this overall process  
21 and rarely contribute to more than 20 percent of gross  
22 sales, but, realistically, our internal survey and  
23 findings point to 4 percent of gross sales from the  
24 alteration services.

25           Thank you for your time today and allowing me  
26 to discuss my association's concern.

27           MS. YEE: Thank you very much, Mr. Lim.

28           Mr. McGuire and Mr. Tucker, do you want to

1     respond to the concerns that have been raised?

2                 Maybe first the need for education relating to  
3     the 7525?

4                 MR. MC GUIRE:  Yeah, we'd be happy to work with  
5     their associations and provide either some specific  
6     training classes, you know, through our field offices.  
7     If we need to provide some written materials, we could  
8     do that as well.

9                 And we'd be happy to work with them, just as we  
10    have through this process to help get the word out to  
11    their members.

12                MS. YEE:  Okay.

13                MR. MC GUIRE:  And to help make it as simple as  
14    it can be where it has some, you know, percentage  
15    requirements that they to have calculate first to know  
16    which category you fall in.

17                MS. YEE:  Okay, very well.

18                And it seems to me that some resources  
19    available in different languages would be helpful here.

20                This was --

21                MR. MC GUIRE:  Absolutely.

22                MS. YEE:  This was an issue that was identified  
23    during the pilot project of the business license  
24    inspection program.  And I think it was a particular  
25    problem in some of the emerging ethnic communities.

26                MR. MC GUIRE:  Yeah, we have a number of staff  
27    in our field offices that, you know, is bilingual in a  
28    number of -- you know, all of the languages spoke in

1 California.

2 MS. YEE: Okay.

3 MR. MC GUIRE: So, we can provide those  
4 services in whichever languages they need us to do that.

5 MS. YEE: Okay, very well.

6 The second issue about the sale of other  
7 tangible personal property on these premises?

8 MR. TUCKER: In regards to -- Bob Tucker of the  
9 Legal Department.

10 In regards to the de minimis sales, Revenue and  
11 Taxation Code 6018.6 is -- provides the legal basis to  
12 treat these alterations -- treat them as the consumer of  
13 these alterations.

14 However, subdivision B of that statute says  
15 that they're the retailer of all other tangible personal  
16 property.

17 And we feel the best way to address this would  
18 be a statutory change, a legislative change and that it  
19 could be accomplished and then it would set a bright  
20 line for these types of sellers.

21 MS. YEE: Let me ask you, is there anything  
22 with respect to our rules on occasional sales that might  
23 be appropriate?

24 MR. TUCKER: That would be another possibility.

25 Regulation 1595 defines what is an occasional  
26 sale. And we could look to see how this might fit  
27 within those confines.

28 MR. MC GUIRE: Yeah, if we did just occasional

1 sales in general, then we'd opening it up to all types  
2 of -- small retailers that possibly would fall below,  
3 you know, some threshold -- which from an administrative  
4 standpoint eliminates a lot of small taxpayers and  
5 actually makes administration easier.

6 But at the same time that typically does have  
7 some revenue impact. So, just kind of both sides.

8 MS. STEEL: Ms. Yee?

9 MS. YEE: Ms. Steel?

10 MS. STEEL: You know how much is -- how much is  
11 going to cost for the administrative cost?

12 Because what they're asking is gross amount of  
13 under 400 is going to be exempt. So, that has -- the  
14 first question is how much, you know, we suspend that,  
15 you know, per each store? I mean, it's going to be  
16 almost impossible to get out, but, you know, it's cost  
17 effective.

18 And second one is we going to change the law  
19 but it's going to be too much burden on each taxpayers,  
20 that, you know, that they try to get the seller's permit  
21 and on the top of it they have to report, you know,  
22 every month -- especially those dry cleaners, that they  
23 are doing as a service for selling these items.

24 And another question is that they already paid  
25 the sales taxes on these items. Is that double taxation  
26 that, you know, we try to collect another sales tax on  
27 top of it to the -- from the customers?

28 MR. MC GUIRE: I can address several of those

1 questions.

2 Specifically related to the cost or  
3 administrative cost of processing a tax return, most of  
4 these taxpayers would be annual filers. So, they would  
5 file once a year, unless they have over \$1200 in tax due  
6 during the year.

7 So, they would file one return and the cost for  
8 us at the administrative agency is about \$7 to process a  
9 paper return. It's obviously much cheaper to process an  
10 electronic return.

11 MS. STEEL: But the seller's permit costs \$100  
12 per --

13 MR. MC GUIRE: Seller's permits do not cost  
14 anything currently, they are no charge. But you do have  
15 to still fill out an application and obtain a permit  
16 from us and a lot of materials to assist you in how to  
17 apply tax to your business.

18 MR. LEONARD: And perhaps a security deposit?

19 MS. STEEL: Right.

20 MR. MC GUIRE: Perhaps a security deposit.  
21 Typically they wouldn't reach the threshold to require  
22 one, due to the level their sales since we have a \$2,000  
23 minimum threshold requirement for security deposits.

24 MR. TUCKER: Bob Tucker speaking.

25 In regards to paying the tax on the purchase of  
26 these items, it sounded as if they gave away at least  
27 some of these items.

28 And so, they're the consumer of those that they

1 give away. If they are actually reselling these items,  
2 then they would issue a resale certificate to their  
3 vendor. And they would purchase them without the  
4 payment of tax reimbursement at that time.

5 But if they are giving these away, then they  
6 should properly be paying tax reimbursement or use tax  
7 when they purchase those items.

8 MR. MC GUIRE: Just to clarify too, there are  
9 other alternatives.

10 If they're paying tax on everything because  
11 they're not sure if they're going to give it away or  
12 sell it, then they'd just take a tax paid purchase  
13 resold credit.

14 So, in the example that they gave that they  
15 bought an item for a dollar and that they paid tax on  
16 it, but sold it for \$2, they would show \$2 as their  
17 total sales, minus the dollar and they would only pay an  
18 additional tax on the \$1 that they marked up the item.

19 MR. LIM: These dry cleaner not easy to  
20 calculate those process. It's the -- for example, if we  
21 purchase for \$1, we sell the \$2, make it \$1 profit.

22 And how we going to isolate those from the  
23 other income source? It's not easy.

24 Also we don't sell this items many, maybe less  
25 than five, some of -- some items you may already notice  
26 that no one picked them up, the color fade. It's been  
27 there -- a lot of dusties, and -- but still people  
28 looking for it.

1           And also collar stays, we can't just put these  
2   item as free. Because if we just put in free and  
3   everyone takes, but the main proposal have this one for  
4   complimentary service, that during the -- the cleaning  
5   process, especially man's dress shirts, those collar  
6   stays coming out from the during cleaning process  
7   agitation.

8           So, that's why the customer complains or, you  
9   know, they need the collar stays. We just gave to them  
10  as complimentary and/or gift.

11           MS. YEE: Okay.

12           MR. LIM: And this is very common the  
13  problem -- I mean common, gift item for the Christmas  
14  time.

15           MS. YEE: Very well.

16           MS. Mandel, do you have anything?

17           MS. MANDEL: I don't have a question.

18           MS. YEE: Dr. Chu?

19           DR. CHU: Yes. Do we have a brochure that  
20  explains all of the requirements for cleaners?

21           MR. MC GUIRE: I don't believe we have a  
22  specific publication related to cleaners.

23           But we could create one.

24           DR. CHU: Seems like --

25           MR. MC GUIRE: No problem.

26           DR. CHU: -- we need a brochure that talks  
27  about the overall sales tax obligations, as well as this  
28  updated kind of situation.

1           Of course, I would imagine that we have the  
2   database of cleaners in our -- within the BOE.

3   That's --

4           MR. MC GUIRE: I am giving you a funny look.

5           DR. CHU: -- looks like --

6           MR. MC GUIRE: Yes, we do identify all of our  
7   businesses using the NAKES codes, business codes.

8           And, so, we can narrow it down pretty close.  
9   We'd probably have some that aren't exactly fitting in  
10   there, but, yeah, we can narrow down, at least  
11   primarily, who this group is.

12           DR. CHU: Because it seems like it would be  
13   good to send out to all cleaners and then there's the  
14   necessity for having something that's translated in  
15   Korean and then maybe your group can send it out to your  
16   members.

17           MR. LIM: Uh-huh.

18           MS. STEEL: Ms. Yee?

19           MS. YEE: Ms. Steel, then Mr. Leonard.

20           MS. STEEL: If it's okay with you, I want staff  
21   members to come back with how can -- what's the  
22   procedure that, you know, we going to go through after  
23   that under \$400 gross sales?

24           MS. YEE: Well, I was going to make the  
25   suggestion that we proceed with the proposed changes  
26   that are before us here today, because I'm concerned  
27   about having this clarification distributed as we look  
28   to launch the next iteration of the business license

1 inspection program throughout the state.

2 So, I think the clarification with respect to  
3 the application of tax on the alteration charges ought  
4 to be adopted by this Board today.

5 I then would want to initiate a separate  
6 process to look at, perhaps, the rule relating to the  
7 occasional sales to deal with the de minimis sales  
8 activity.

9 MS. STEEL: Okay, thank you.

10 MS. YEE: Okay, Mr. Leonard?

11 MR. LEONARD: I support your suggestion and  
12 want to follow-up with Ms. Steel's that perhaps we could  
13 send out an observation team in cooperation with the  
14 industry and actually just look at how they do it.

15 I'm hearing different things. It sounds to me  
16 like -- like dry cleaners generally don't purchase the  
17 cash register software of a retailer because they are  
18 not retailers. And, so, they -- it's not keyed like a  
19 retail sale might be -- taxable, tax exempt or  
20 whatever -- it's all cleaning and laundry.

21 And if we could observe and -- well, how  
22 many -- not only how many sales took place, but what the  
23 markup might be, if any, just how they're organized,  
24 that may help us in the publication and in describing a  
25 threshold of work and business.

26 Because it seems to me like this is a -- the  
27 model that these people bring to us is a service  
28 industry model. And we all recognize that whatever

1     tangible personal property is involved in it is really a  
2     sideline, may, in a broad definition, be self consumed  
3     in that it's clearly -- to the extent they offer these  
4     products for their customers, it's not as a profit  
5     center. It's because the customer is right there  
6     saying, "I need a collar stay. I need a button. I need  
7     whatever. And I don't want to go to the drug store and  
8     go sew it on or bring it back to you to sew on or  
9     whatever."

10             If we could look at that, how they actually  
11     operate, it might help us in both our publications and  
12     legislation that we might recommend working with the  
13     industry and doing -- to further define that, what  
14     bright line there might be.

15             MS. YEE: Very well.

16             Other questions or comments, Members?

17             MR. CHOE: We have over 6,000 dry cleaners in  
18     California, but I would say maybe about less than 10  
19     percent carry those items.

20             MS. YEE: Less than 10 percent?

21             MR. CHOE: Yes, less than 10 percent of  
22     cleaners carry those items.

23             And most dry cleaners --

24             MR. LEONARD: Don't even do that.

25             MR. CHOE: -- don't even carry it.

26             MR. LEONARD: Okay.

27             MS. YEE: All right, thank you.

28             No other questions or comments? Is there a

1 motion?

2 DR. CHU: Move to adopt the staff  
3 recommendation.

4 MS. YEE: Okay. Motion by Dr. Chu to adopt the  
5 staff recommendation, which includes authorization to  
6 publish.

7 Is there a second?

8 MS. MANDEL: Second.

9 MS. YEE: Second by Ms. Mandel.

10 Without objection, such will be the order.

11 Thank you very much.

12 We are going to pursue a separate process to  
13 talk about the sale of those tangible personal property  
14 that is being conducted by 10 of the dry cleaners. So,  
15 we will be in contact with you to get that process,  
16 started.

17 MR. CHOE: Thank you very much.

18 MS. YEE: Thank you very much for coming.

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1 MS. YEE: Next item.

2 MR. MCGUIRE: Okay. The second item today  
3 involves proposed revisions to Regulation 1705, entitled  
4 Relief from Liability.

5 Alternative 1, which is recommend by staff,  
6 would clarify that the relief provisions provided under  
7 Section 6596 would apply when an identified franchisee  
8 relies on incorrect written advice to their franchisor.

9 Alternative 2 would make no changes to the  
10 regulation.

11 And, again, we respectfully request your  
12 approval to publish any -- approve and publish any  
13 changes.

14 I don't believe we have any speakers for this  
15 topic.

16 MS. YEE: We do not.

17 Questions or comments, Members?

18 Okay, hearing none, is there a motion?

19 DR. CHU: Move to approve.

20 MS. YEE: Okay. Motion by Dr. Chu to approve  
21 the proposed changes and authorize publication.

22 Is there a second?

23 MS. MANDEL: Second.

24 MS. YEE: Second by Ms. Mandel.

25 Without objection, such will be the order.

26 Thank you very much.

27 MR. MCGUIRE: Thanks. Thank you.

28 DR. CHU: Okay, that does it for the Business

1 Taxes Committee.

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REPORTER'S CERTIFICATE

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I, JULI PRICE JACKSON Hearing Reporter for the  
California State Board of Equalization certify that on  
SEPTEMBER 16, 2008 I recorded verbatim, in shorthand, to  
the best of my ability, the proceedings in the  
above-entitled hearing; that I transcribed the shorthand  
writing into typewriting; and that the preceding pages 1  
through 21 constitute a complete and accurate  
transcription of the shorthand writing.

Dated: October 15, 2008

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JULI PRICE JACKSON  
Hearing Reporter

[illegible]

I, BEVERLY D. TOMS, Hearing Reporter for the California State Board of Equalization certify that on September 16, 2008 I recorded verbatim, in shorthand, to the best of my ability, the proceedings in the above-entitled hearing; that I transcribed the shorthand writing into typewriting; and that the preceding pages, pages 22 through 23 constitute a complete and accurate transcription of the shorthand writing.

Dated: October 16, 2008.

BEVERLY D. TOMS  
Hearing Reporter

**ESTIMATE OF COST OR SAVINGS RESULTING  
FROM PROPOSED REGULATORY ACTION**

**Proposed Amendment of Sales and Use Tax Regulation 1705, *Relief from Liability***


**STATEMENT OF COST OR SAVINGS FOR NOTICE OF PUBLIC HEARING**

The State Board of Equalization has determined that the proposed action does not impose a mandate on local agencies or school districts. Further, the Board has determined that the action will result in no direct or indirect cost or savings to any State agency, any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code or other non-discretionary cost or savings imposed on local agencies, or cost or savings in Federal funding to the State of California.

The cost impact on private persons or businesses will be insignificant. This proposal will not have a significant adverse economic impact on businesses.

This proposal will not be detrimental to California businesses in competing with businesses in other states.

This proposal will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand business in the State of California.

Statement  
Prepared by  Date 9-30-2008  
Regulations Coordinator

Approved by  Date 9/30/08  
Chief Counsel

**If Costs or Savings are Identified, Signatures of Chief, Fiscal Management Division, and Chief, Board Proceedings Division, are Required**

Approved by \_\_\_\_\_ Date \_\_\_\_\_  
Chief, Financial Management Division

Approved by \_\_\_\_\_ Date \_\_\_\_\_  
Chief, Board Proceedings Division

**NOTE: SAM Section 6660 requires that estimates resulting in cost or savings be submitted for Department of Finance concurrence before the notice of proposed regulatory action is released.**

## ESTIMATE OF COST OR SAVINGS WORKSHEET

Proposed Regulations      1705  
Title:                      *Relief from Liability*

\*Yes   No

- |                          |   |  |
|--------------------------|---|--|
| <input type="checkbox"/> | x | Imposes mandate on local agencies or school districts<br>[Government Code Section 11346.5(a)(5)]   |
| <input type="checkbox"/> | x | If yes, does mandate require state reimbursement pursuant<br>to Part 7 (commencing with Section 17500) of Division 4<br>of Title 2 of the Government Code                |
| <input type="checkbox"/> | x | Cost or savings to any state agency  |
| <input type="checkbox"/> | x | Cost to any local agency or school district required to be<br>reimbursed under Part 7 (commencing with Section 17500)<br>or Division 4 of Title 2 of the Government Code |
| <input type="checkbox"/> | x | Nondiscretionary cost or savings imposed on local agencies   |
| <input type="checkbox"/> | x | Cost or savings in federal funding to state  |
| <input type="checkbox"/> | x | Cost impact on representative private person or business<br>directly affected [Government Code Section 11346.5(a)(9)]  |
| <input type="checkbox"/> | x | Significant adverse economic impact on businesses<br>[Government Code Section 11346.5(a)(8)]   |
| <input type="checkbox"/> | x | Affect on business including ability of California business<br>to compete with business in other states  |

\*If yes, attach separate sheet with explanation

**NOTE: SAM Section 6056 requires that estimates resulting in costs or savings must be submitted for Department of Finance concurrence before the notice of proposed regulatory action is released.**

Prepared by: \_\_\_\_\_  
2008

Date: September 18,

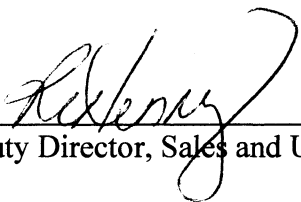
Tim Treichelt

## REVENUE STATEMENT

### Regulation (s): Proposed Amendment of Sales and Use Tax Regulation 1705, *Relief from Liability*

Regulation 1705 is proposed to be amended to extend Section 6596 relief to franchisees and franchisors. There is nothing in the revisions that would impact local tax revenue. The changes are procedural and do not have an impact on state and local sales and use tax revenue collections.

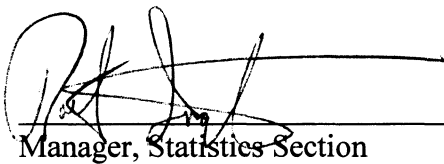
Source: September 16, 2008, Business Taxes Committee Minutes, approved September 17, 2008.

  
\_\_\_\_\_  
Deputy Director, Sales and Use Taxes

Date 10-3-08

  
\_\_\_\_\_  
Chief Counsel, Legal Department

Date 10/20/08

  
\_\_\_\_\_  
Manager, Statistics Section

Date 10/15/08

  
\_\_\_\_\_  
Chief, Board Proceedings Division

Date 10/1/2008

**ECONOMIC AND FISCAL IMPACT STATEMENT  
(REGULATIONS AND ORDERS)**

STD. 399 (Rev. 2-98)

See SAM Sections 6600 - 6680 for Instructions and Code Citations

DEPARTMENT NAME State Board of Equalization	CONTACT PERSON Rick Bennion	TELEPHONE NUMBER 916-445-2130
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Title 18, Section 1705, Relief from Liability		NOTICE FILE NUMBER Z

**ECONOMIC IMPACT STATEMENT****A. ESTIMATED PRIVATE SECTOR COST IMPACTS** *(Include calculations and assumptions in the rulemaking record.)*

1. Check the appropriate box(es) below to indicate whether this regulation:

- |   |   |
|---|---|
| <input type="checkbox"/> a. Impacts businesses and/or employees | <input type="checkbox"/> e. Imposes reporting requirements  |
| <input type="checkbox"/> b. Impacts small businesses            | <input type="checkbox"/> f. Imposes prescriptive instead of performance standards   |
| <input type="checkbox"/> c. Impacts jobs or occupations         | <input type="checkbox"/> g. Impacts individuals   |
| <input type="checkbox"/> d. Impacts California competitiveness  | <input checked="" type="checkbox"/> h. None of the above <i>(Explain below. Complete the Fiscal Impact Statement as appropriate.)</i> |

h. (cont.) No significant adverse economic impact on business or employees, small business, jobs or occupations.*(If any box in Items 1 a through g is checked, complete this Economic Impact Statement.)*2. Enter the total number of businesses impacted: \_\_\_\_\_ Describe the types of businesses *(Include nonprofits)*: \_\_\_\_\_

Enter the number or percentage of total businesses impacted that are small businesses: \_\_\_\_\_

3. Enter the number of businesses that will be created: \_\_\_\_\_ eliminated: \_\_\_\_\_  
Explain: \_\_\_\_\_4. Indicate the geographic extent of impacts: ☐ Statewide ☐ Local or regional *(list areas)*: \_\_\_\_\_

5. Enter the number of jobs created: \_\_\_\_\_ or eliminated: \_\_\_\_\_ Describe the types of jobs or occupations impacted: \_\_\_\_\_

6. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?

☐ Yes ☐ No If yes, explain briefly: \_\_\_\_\_**B. ESTIMATED COSTS** *(Include calculations and assumptions in the rulemaking record.)*

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ \_\_\_\_\_

a. Initial costs for a small business: \$ \_\_\_\_\_ Annual ongoing costs: \$ \_\_\_\_\_ Years: \_\_\_\_\_

b. Initial costs for a typical business: \$ \_\_\_\_\_ Annual ongoing costs: \$ \_\_\_\_\_ Years: \_\_\_\_\_

c. Initial costs for an individual: \$ \_\_\_\_\_ Annual ongoing costs: \$ \_\_\_\_\_ Years: \_\_\_\_\_

d. Describe other economic costs that may occur: \_\_\_\_\_

**ECONOMIC AND FISCAL IMPACT STATEMENT *cont.* (STD. 399, Rev. 2-98)**

2. If multiple industries are impacted, enter the share of total costs for each industry: \_\_\_\_\_  
\_\_\_\_\_
3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. *(Include the do costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.):* \$ \_\_\_\_\_
4. Will this regulation directly impact housing costs? ☐ Yes ☐ No If yes, enter the annual dollar cost per housing unit: \$ \_\_\_\_\_ and the number of units: \_\_\_\_\_
5. Are there comparable Federal regulations? ☐ Yes ☐ No Explain the need for State regulation given the existence or absence of Federal regulations: \_\_\_\_\_  
Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ \_\_\_\_\_

**C. ESTIMATED BENEFITS** *(Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)*

1. Briefly summarize the benefits that may result from this regulation and who will benefit: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
2. Are the benefits the result of: ☐ specific statutory requirements, or ☐ goals developed by the agency based on broad statutory authority?  
Explain: \_\_\_\_\_
- ... What are the total statewide benefits from this regulation over its lifetime? \$ \_\_\_\_\_

**D. ALTERNATIVES TO THE REGULATION** *(Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)*

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:
- |                |                   |                |
|----------------|-------------------|----------------|
| Regulation:    | Benefit: \$ _____ | Cost: \$ _____ |
| Alternative 1: | Benefit: \$ _____ | Cost: \$ _____ |
| Alternative 2: | Benefit: \$ _____ | Cost: \$ _____ |

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? ☐ Yes ☐ No  
Explain: \_\_\_\_\_

**E. MAJOR REGULATIONS** *(Include calculations and assumptions in the rulemaking record.)*  
*Cal/EPA boards, offices and departments are subject to the following additional requirements per Health and Safety Code section 57005.*

**ECONOMIC AND FISCAL IMPACT STATEMENT *cont. (STD. 399, Rev. 2-98)***

1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million ? ☐ Yes    ☐ No    *(If No, skip the rest of this section)*

Briefly describe each equally as effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: \_\_\_\_\_

Alternative 2: \_\_\_\_\_

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation:                    \$ \_\_\_\_\_                    Cost-effectiveness ratio: \_\_\_\_\_

Alternative 1:                \$ \_\_\_\_\_                    Cost-effectiveness ratio: \_\_\_\_\_

Alternative 2:                \$ \_\_\_\_\_                    Cost-effectiveness ratio: \_\_\_\_\_

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**FISCAL IMPACT STATEMENT**

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**A. FISCAL EFFECT ON LOCAL GOVERNMENT** *(Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years)*

☐ 1. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:

☐ a. is provided in (Item \_\_\_\_\_, Budget Act of \_\_\_\_\_) or (Chapter \_\_\_\_\_, Statutes of \_\_\_\_\_)

☐ b. will be requested in the \_\_\_\_\_ Governor's Budget for appropriation in Budget Act of \_\_\_\_\_.  
(FISCAL YEAR)

☐ 2. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:

☐ a. implements the Federal mandate contained in \_\_\_\_\_

☐ b. implements the court mandate set forth by the \_\_\_\_\_  
court in the case of \_\_\_\_\_ vs. \_\_\_\_\_

☐ c. implements a mandate of the people of this State expressed in their approval of Proposition No. \_\_\_\_\_ at the \_\_\_\_\_  
election; (DATE)

☐ d. is issued only in response to a specific request from the \_\_\_\_\_  
\_\_\_\_\_, which is/are the only local entity(s) affected;

☐ e. will be fully financed from the \_\_\_\_\_ authorized by Section \_\_\_\_\_  
(FEES, REVENUE, ETC.)  
\_\_\_\_\_ of the \_\_\_\_\_ Code;

☐ f. provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each such unit.

☐ 3. Savings of approximately \$ \_\_\_\_\_ annually.

☐ 4. No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current law and regulations.

**ECONOMIC AND FISCAL IMPACT STATEMENT *cont.* (STD. 399, Rev. 2-98)**

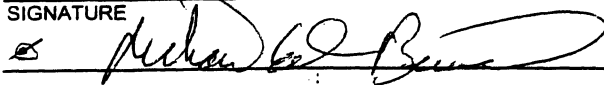


- ☒ 5. No fiscal impact exists because this regulation does not affect any local entity or program.
- ☐ 6. Other.

**B. FISCAL EFFECT ON STATE GOVERNMENT** *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

- ☐ 1. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year. It is anticipated that State agencies will:
- ☐ a. be able to absorb these additional costs within their existing budgets and resources.
- ☐ b. request an increase in the currently authorized budget level for the \_\_\_\_\_ fiscal year.
- ☐ 2. Savings of approximately \$ \_\_\_\_\_ in the current State Fiscal Year.
- ☒ 3. No fiscal impact exists because this regulation does not affect any State agency or program.
- ☐ 4. Other.

**C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS** *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

- ☐ 1. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year.
- ☐ 2. Savings of approximately \$ \_\_\_\_\_ in the current State Fiscal Year.
- ☒ 3. No fiscal impact exists because this regulation does not affect any federally funded State agency or program.
- ☐ 4. Other.

SIGNATURE		TITLE	
		Regulations Coordinator	
AGENCY SECRETARY <sup>1</sup>		DATE	
APPROVAL/CONCURRENCE 		10/3/08	
DEPARTMENT OF FINANCE <sup>2</sup>		DATE	
APPROVAL/CONCURRENCE  Exempt under SAM section 6660			

- The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6600-6680, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.
- Finance approval and signature is required when SAM sections 6600-6670 require completion of the Fiscal Impact Statement in the STD. 399.

**NOTICE PUBLICATION/REGULATIONS SUBMISSION**(See instructions on  
reverse)

For use by Secretary of State only

STD. 400 (REV. 01-08)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-2008-1003-01</b>	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

RECEIVED FOR FILING PUBLICATION UNIT OCT 9 2008 OCT 17 2008 Office of Administrative Law	NOTICE REGULATIONS
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**AGENCY WITH RULEMAKING AUTHORITY**  
 State Board of Equalization

AGENCY FILE NUMBER (If any)

**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE <b>Relief from Liability</b>		TITLE(S) <b>18</b>	FIRST SECTION AFFECTED <b>1705</b>	2. REQUESTED PUBLICATION DATE <b>October 17, 2008</b>
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input checked="" type="checkbox"/> Other		4. AGENCY CONTACT PERSON <b>Rick Bennion</b>	TELEPHONE NUMBER <b>(916) 445-2130</b>	FAX NUMBER (Optional) <b>(916) 324-3984</b>
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S)	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
------------------------------	--

SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND
	REPEAL
TITLE(S)	

## 3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only
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4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective 30th day after filing with Secretary of State <input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____
--	--

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Other (Specify) _____	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
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7. CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE

10/03/2008

TYPED NAME AND TITLE OF SIGNATORY

Chief, Board Proceedings Division

## Title 18. State Board of Equalization

### NOTICE IS HEREBY GIVEN

The State Board of Equalization, pursuant to the authority vested in it by section 15606(a) of the Government Code, proposes regulatory changes to Sales and Use Tax Regulation 1705, *Relief from Liability*, in Title 18, Division 2, Chapter 4, of the California Code of Regulations, relating to sales and use tax. A public hearing on the proposed regulation amendments will be held in Room 121, 450 N Street, Sacramento, at 9:30a.m., or as soon thereafter as the matter may be heard, on Tuesday, December 16, 2008. At the hearing, any person interested may present statements or arguments orally or in writing relevant to the proposed regulatory action. The Board will consider written statements or arguments if received by December 16, 2008.

### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

CURRENT LAW: Revenue and Taxation Code section (Section) 6596 provides relief from tax, interest, and penalty charges due on a transaction if the Board determines that the taxpayer failed to pay tax because it reasonably relied on erroneous written advice from the Board. For relief to apply, the Board must have received a written request for advice on the transaction, the request must have identified the taxpayer to whom the advice applied, and the request must have fully described the facts and circumstances of the transaction. Section 6596 subdivision (d) states that, “[o]nly the person making the written request shall be entitled to rely on the board’s written advice to that person.” Accordingly, taxpayers cannot obtain relief by relying on a written opinion given to another business, even if the transactions are similar. However, a taxpayer may rely on advice given to the taxpayer’s representative provided that the representative identifies the person for whom the advice is requested. Regulation 1705, *Relief from Liability*, is based upon Section 6596 and explains its provisions in more detail. In 1999, Regulation 1705 was amended to extend Section 6596 relief to trade or industry association members when an association requests written advice on behalf of its members. In order to obtain relief under Section 6596, the members must be identified in the association’s request for advice. Proposed regulatory changes to Regulation 1705, explain that similar relief applies to franchisees and franchisors.

### COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The State Board of Equalization has determined that the proposed regulation does not impose a mandate on local agencies or school districts. Further, the Board has determined that the proposed regulation will result in no direct or indirect cost or savings to any State agency, any local agency or school district that is required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government Code, or other non-discretionary cost or savings imposed on local agencies, or cost or savings in Federal funding to the State of California.

### EFFECT ON BUSINESS

Pursuant to Government Code section 11346.5(a)(7), the Board of Equalization makes an initial determination that the proposed regulatory changes to Sales and Use Tax Regulation 1705 will have no significant statewide adverse economic impact directly affecting business.

The adoption of the proposed regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

The regulation as proposed will not be detrimental to California businesses in competing with businesses in other states.

The proposed regulation may affect small business.

#### **COST IMPACT ON PRIVATE PERSONS OR BUSINESSES**

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

#### **SIGNIFICANT EFFECT ON HOUSING COSTS**

No significant effect.

#### **FEDERAL REGULATIONS**

Proposed Regulation 1705 has no comparable federal regulations.

#### **AUTHORITY**

Section 7051, Revenue and Taxation Code.

#### **REFERENCE**

Section 6596, Revenue and Taxation Code

#### **CONTACT**

Questions regarding the substance of the proposed regulation should be directed to Ms. Lisa Andrews (916) 322-5989, at 450 N Street, Sacramento, CA 95814, e-mail [Lisa.Andrews@boe.ca.gov](mailto:Lisa.Andrews@boe.ca.gov) or by mail at State Board of Equalization, Attn: Lisa Andrews, MIC:50, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0050.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, telephone (916) 445-2130, fax (916) 324-3984 , e-mail [Richard.Bennion@boe.ca.gov](mailto:Richard.Bennion@boe.ca.gov) or by mail at State Board of Equalization, Attn: Rick Bennion MIC:81, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0080.

## ALTERNATIVES CONSIDERED

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, or be as effective as and less burdensome to affected private persons than the proposed action.

## AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an initial statement of reasons and an underscored version (express terms) of the proposed regulation. Both of these documents and all information on which the proposal is based are available to the public upon request. The Rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulation are available on the Internet at the Board's web site <http://www.boe.ca.gov>.

## AVAILABILITY OF FINAL STATEMENT OF REASONS

The final statement of reasons will be made available on the Internet at the Board's web site following its public hearing of the proposed regulation. It is also available for your inspection at 450 N Street, Sacramento, California.

## ADDITIONAL COMMENTS

Following the hearing, the State Board of Equalization may in accordance with law adopt the proposed regulation if the text remains substantially the same as described in the text originally made available to the public. If the State Board of Equalization makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the regulation. The text of any modified regulation will be mailed to those interested parties who commented on the proposed regulatory action orally or in writing or who asked to be informed of such changes. The modified regulation will be available to the public from Mr. Bennion. The State Board of Equalization will consider written comments on the modified regulation for fifteen days after the date on which the modified regulation is made available to the public.

## **Proposed amendments to Regulation 1705**

### **Regulation 1705. RELIEF FROM LIABILITY.**

*Reference:* Section 6596, Revenue and Taxation Code.

**(a) IN GENERAL.** A person may be relieved from the liability for the payment of sales and use taxes, including any penalties and interest added to those taxes, when that liability resulted from the failure to make a timely return or a payment and such failure was found by the Board to be due to reasonable reliance on:

(1) Written advice given by the Board under the conditions set forth in subdivision (b) below; or

(2) Written advice in the form of an annotation or legal ruling of counsel under the conditions set forth in subdivision (d) below; or

(3) Written advice given by the Board in a prior audit of that person under the conditions set forth in subdivision (c) below. As used in this regulation, the term "prior audit" means any audit conducted prior to the current examination where the issue in question was examined.

Written advice from the Board may only be relied upon by the person to whom it was originally issued or a legal or statutory successor to that person. Written advice from the Board which was received during a prior audit of the person under the conditions set forth in subdivision (c) below, may be relied upon by the person audited or by a legal or statutory successor to that person.

The term "written advice" includes advice that was incorrect at the time it was issued as well as advice that was correct at the time it was issued, but, subsequent to issuance, was invalidated by a change in statutory or constitutional law, by a change in Board regulations, or by a final decision of a court of competent jurisdiction. Prior written advice may not be relied upon subsequent to: (1) the effective date of a change in statutory or constitutional law and Board regulations or the date of a final decision of a court of competent jurisdiction regardless that the Board did not provide notice of such action; or (2) the person receiving a subsequent writing notifying the person that the advice was not valid at the time it was issued or was subsequently rendered invalid. As generally used in this regulation, the term "written advice" includes both written advice provided in a written communication under subdivision (b) below and written advice provided in a prior audit of the person under subdivision (c) below.

#### **(b) ADVICE PROVIDED IN A WRITTEN COMMUNICATION.**

(1) Advice from the Board provided to the person in a written communication must have been in response to a specific written inquiry from the person seeking relief from liability, or from his or her representative. To be considered a specific written inquiry for purposes of this regulation, representatives must identify the specific person for whom the advice is requested. Such inquiry must have set forth and fully described the facts and circumstances of the activity or transactions for which the advice was requested.

(2) A person may write to the Board and propose a use tax reporting methodology for qualified purchases subject to use tax. If the Board concludes that the reporting method reflects the person's use tax liability for the defined population, then the Board may write to the person approving the use of the reporting method. The approval shall be subject to certain conditions. The following conditions shall be included in the approval:

(A) The defined population of the purchases that will be included in the reporting method;

(B) The percentage of purchases of the defined population that is subject to tax;

(C) The length of time the writing shall remain in effect;

(D) The definition of a significant or material change that will require rescinding the approved reporting method; and

(E) Other conditions as required.

The written approval of the use tax reporting methodology is void and shall not be relied upon for the purposes of Revenue and Taxation Code section 6596 if the taxpayer files a claim for refund for tax that had been reported based upon this reporting method.

**(c) WRITTEN ADVICE PROVIDED IN A PRIOR AUDIT.** Presentation of the person's books and records for examination by an auditor shall be deemed to be a written request for the audit report. If a prior audit report of the person requesting relief contains written evidence which demonstrates that the issue in question was examined, either in a sample or census (actual) review, such evidence will be considered "written advice from the Board" for purposes of this regulation. A census (actual) review, as opposed to a sample review, involves examination of 100% of the person's transactions pertaining to the issue in question. For written advice contained in a prior audit of the person to apply to the person's activity or transaction in question, the facts and conditions relating to the activity or transaction must not have changed from those which occurred during the period of operation in the prior audit. Audit

## Proposed amendments to Regulation 1705

comments, schedules, and other writings prepared by the Board that become part of the audit work papers which reflect that the activity or transaction in question was properly reported and no amount was due are sufficient for a finding for relief from liability, unless it can be shown that the person seeking relief knew such advice was erroneous.

**(d) ANNOTATIONS AND LEGAL RULINGS OF COUNSEL.** Advice from the Board provided to the person in the form of an annotation or legal ruling of counsel shall constitute written advice only if:

(1) The underlying legal ruling of counsel involving the fact pattern at issue is addressed to the person or to his or her representative under the conditions set forth in subdivision (b) above; or

(2) The annotation or legal ruling of counsel is provided to the person or his or her representative by the Board within the body of a written communication and involves the same fact pattern as that presented in the subject annotation or legal ruling of counsel.

**(e) TRADE OR INDUSTRY ASSOCIATIONS OR FRANCHISORS.** A trade or industry association requesting advice on behalf of its member(s) must identify and include the specific member name(s) for whom the advice is requested for relief from liability under this regulation. A franchisor requesting advice on behalf of its franchisee(s) must identify and include the specific franchisee name(s) for whom the advice is requested for relief from liability under this regulation.

For an identified trade or industry member or franchisee to receive relief based on advice provided in the written communication to the trade or industry association or franchisor, the activity or transactions in question must involve the same facts and circumstances as those presented in the written inquiry by the association or franchisor.

**Bennion, Richard**

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**From:** Forman, Amber M [Amber.M.Forman@BOE.CA.GOV]  
**Sent:** Friday, October 17, 2008 9:02 AM  
**To:** BOE\_REGULATIONS@LISTSERV.CAHWNET.GOV  
**Subject:** State Board of Equalization - Announcement of Regulatory Change 1705

The State Board of Equalization will hold a public hearing regard to amending section 1705, *Relief from Liability*. The amendments are proposed to be adopted to clarify when a franchisee is relieved from sales or use tax liability based on erroneous advice provided to its franchisor. The public hearing on the proposed regulations will be held in Room 121, 450 N Street, Sacramento, at 9:30 a.m., or as soon thereafter as the matter may be heard, on Wednesday, December 16, 2008.

To view the notice of hearing, initial statement of reasons, proposed text, and history click on the following link:  
<http://www.boe.ca.gov/regs/reg1705.htm>

Questions regarding the substance of the proposed amendments to Regulations 1506 and 1524 should be directed to: Ms. Lisa Andrews (916) 322-5989, at 450 N Street, Sacramento, CA 95814, e-mail [Lisa.Andrews@boe.ca.gov](mailto:Lisa.Andrews@boe.ca.gov) or by mail at State Board of Equalization, Attn: Lisa Andrews, MIC:50, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0050.

Written comments for the Board's consideration, notices of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed regulatory action should be directed to Rick Bennion, Regulations Coordinator, telephone (916) 445-2130, fax (916) 324-3984, e-mail [Richard.Bennion@boe.ca.gov](mailto:Richard.Bennion@boe.ca.gov) or by mail to: State Board of Equalization, Attn: Rick Bennion, MIC: 80, P.O. Box 942879-0080, Sacramento, CA 94279-0080.

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ly incur in reasonable compliance with the proposed action.

#### **SIGNIFICANT EFFECT ON HOUSING COSTS**

No significant effect.

#### **FEDERAL REGULATIONS**

Proposed Regulations 1506 and 1524 have no comparable federal regulations.

#### **AUTHORITY**

Section 6018.6 Revenue and Taxation Code.

#### **REFERENCE**

Section 6006 Revenue and Taxation Code.

#### **CONTACT**

Questions regarding the substance of the proposed regulation should be directed to Ms. Lisa Andrews (916) 322-5989, at 450 N Street, Sacramento, CA 95814, e-mail [Lisa.Andrews@boe.ca.gov](mailto:Lisa.Andrews@boe.ca.gov) or by mail at State Board of Equalization, Attn: Lisa Andrews, MIC:50, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0050.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, telephone (916) 445-2130, fax (916) 324-3984, e-mail [Richard.Bennion@boe.ca.gov](mailto:Richard.Bennion@boe.ca.gov) or by mail at State Board of Equalization, Attn: Rick Bennion MIC:81, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0080.

#### **ALTERNATIVES CONSIDERED**

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, or be as effective as and less burdensome to affected private persons than the proposed action.

#### **AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION**

The Board has prepared an initial statement of reasons and an underscored version (express terms) of the proposed regulation. Both of these documents and all information on which the proposal is based are available to the public upon request. The Rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulation are available on the Internet at the Board's web site <http://www.boe.ca.gov>.

#### **AVAILABILITY OF FINAL STATEMENT OF REASONS**

The final statement of reasons will be made available on the Internet at the Board's web site following its public hearing of the proposed regulation. It is also available for your inspection at 450 N Street, Sacramento, California.

#### **ADDITIONAL COMMENTS**

Following the hearing, the State Board of Equalization may in accordance with law adopt the proposed regulation if the text remains substantially the same as described in the text originally made available to the public. If the State Board of Equalization makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the regulation. The text of any modified regulation will be mailed to those interested parties who commented on the proposed regulatory action orally or in writing or who asked to be informed of such changes. The modified regulation will be available to the public from Ms. Olson. The State Board of Equalization will consider written comments on the modified regulation for fifteen days after the date on which the modified regulation is made available to the public.

#### **TITLE 18. STATE BOARD OF EQUALIZATION**

#### **NOTICE IS HEREBY GIVEN**

The State Board of Equalization, pursuant to the authority vested in it by section 15606(a) of the Government Code, proposes regulatory changes to Sales and Use Tax Regulation 1705, *Relief from Liability*, in Title 18, Division 2, Chapter 4, of the California Code of

Regulations, relating to sales and use tax. A public hearing on the proposed regulation amendments will be held in Room 121, 450 N Street, Sacramento, at 9:30 a.m., or as soon thereafter as the matter may be heard, on Tuesday, December 16, 2008. At the hearing, any person interested may present statements or arguments orally or in writing relevant to the proposed regulatory action. The Board will consider written statements or arguments if received by December 16, 2008.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

**CURRENT LAW:** Revenue and Taxation Code section (Section) 6596 provides relief from tax, interest, and penalty charges due on a transaction if the Board determines that the taxpayer failed to pay tax because it reasonably relied on erroneous written advice from the Board. For relief to apply, the Board must have received a written request for advice on the transaction, the request must have identified the taxpayer to whom the advice applied, and the request must have fully described the facts and circumstances of the transaction. Section 6596 subdivision (d) states that, "[o]nly the person making the written request shall be entitled to rely on the board's written advice to that person." Accordingly, taxpayers cannot obtain relief by relying on a written opinion given to another business, even if the transactions are similar. However, a taxpayer may rely on advice given to the taxpayer's representative provided that the representative identifies the person for whom the advice is requested. Regulation 1705, *Relief from Liability*, is based upon Section 6596 and explains its provisions in more detail. In 1999, Regulation 1705 was amended to extend Section 6596 relief to trade or industry association members when an association requests written advice on behalf of its members. In order to obtain relief under Section 6596, the members must be identified in the association's request for advice. Proposed regulatory changes to Regulation 1705, explain that similar relief applies to franchisees and franchisors.

#### COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The State Board of Equalization has determined that the proposed regulation does not impose a mandate on local agencies or school districts. Further, the Board has determined that the proposed regulation will result in no direct or indirect cost or savings to any State agency, any local agency or school district that is required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government Code, or other non-discretionary cost or savings imposed on

local agencies, or cost or savings in Federal funding to the State of California.

#### EFFECT ON BUSINESS

Pursuant to Government Code section 11346.5(a)(7), the Board of Equalization makes an initial determination that the proposed regulatory changes to Sales and Use Tax Regulation 1705 will have no significant statewide adverse economic impact directly affecting business.

The adoption of the proposed regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

The regulation as proposed will not be detrimental to California businesses in competing with businesses in other states.

The proposed regulation may affect small business.

#### COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

#### SIGNIFICANT EFFECT ON HOUSING COSTS

No significant effect.

#### FEDERAL REGULATIONS

Proposed Regulation 1705 has no comparable federal regulations.

#### AUTHORITY

Section 7051, Revenue and Taxation Code.

#### REFERENCE

Section 6596, Revenue and Taxation Code.

#### CONTACT

Questions regarding the substance of the proposed regulation should be directed to Ms. Lisa Andrews (916) 322-5989, at 450 N Street, Sacramento, CA 95814, e-mail [Lisa.Andrews@boe.ca.gov](mailto:Lisa.Andrews@boe.ca.gov) or by mail at State Board of Equalization, Attn: Lisa Andrews, MIC:50, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0050.



STATE OF CALIFORNIA

**STATE BOARD OF EQUALIZATION**

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[www.boe.ca.gov](http://www.boe.ca.gov)

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Third District, Rolling Hills Estates

JUDY CHU, Ph.D.  
Fourth District, Los Angeles

JOHN CHIANG  
State Controller

RAMON J. HIRSIG  
Executive Director

**October 17, 2008**

**To Interested Parties:**

**Notice of Proposed Regulatory Action  
by the  
State Board of Equalization**

**Proposed to Adopt Regulation 1705, *Relief from Liability***

**NOTICE IS HEREBY GIVEN**

The State Board of Equalization, pursuant to the authority vested in it by section 15606(a) of the Government Code, proposes regulatory changes to Sales and Use Tax Regulation 1705, *Relief from Liability*, in Title 18, Division 2, Chapter 4, of the California Code of Regulations, relating to sales and use tax. A public hearing on the proposed regulation amendments will be held in Room 121, 450 N Street, Sacramento, at 9:30a.m., or as soon thereafter as the matter may be heard, on Tuesday, December 16, 2008. At the hearing, any person interested may present statements or arguments orally or in writing relevant to the proposed regulatory action. The Board will consider written statements or arguments if received by December 16, 2008.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

CURRENT LAW: Revenue and Taxation Code section (Section) 6596 provides relief from tax, interest, and penalty charges due on a transaction if the Board determines that the taxpayer failed to pay tax because it reasonably relied on erroneous written advice from the Board. For relief to apply, the Board must have received a written request for advice on the transaction, the request must have identified the taxpayer to whom the advice applied, and the request must have fully described the facts and circumstances of the transaction. Section 6596 subdivision (d) states that, "[o]nly the person making the written request shall be entitled to rely on the board's written advice to that person." Accordingly, taxpayers cannot obtain relief by relying on a written opinion given to another business, even if the transactions are similar. However, a taxpayer may rely on advice given to the taxpayer's representative provided that the representative identifies the person for whom the advice is requested. Regulation 1705, *Relief from Liability*, is based upon Section 6596 and explains its provisions in more detail. In 1999, Regulation 1705 was amended to extend Section 6596 relief to trade or industry association members when an association requests written advice on behalf of its members. In order to obtain relief under Section 6596, the members must be identified in the association's request for advice. Proposed

regulatory changes to Regulation 1705, explain that similar relief applies to franchisees and franchisors.

### **COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS**

The State Board of Equalization has determined that the proposed regulation does not impose a mandate on local agencies or school districts. Further, the Board has determined that the proposed regulation will result in no direct or indirect cost or savings to any State agency, any local agency or school district that is required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government Code, or other non-discretionary cost or savings imposed on local agencies, or cost or savings in Federal funding to the State of California.

### **EFFECT ON BUSINESS**

Pursuant to Government Code section 11346.5(a)(7), the Board of Equalization makes an initial determination that the proposed regulatory changes to Sales and Use Tax Regulation 1705 will have no significant statewide adverse economic impact directly affecting business.

The adoption of the proposed regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

The regulation as proposed will not be detrimental to California businesses in competing with businesses in other states.

The proposed regulation may affect small business.

### **COST IMPACT ON PRIVATE PERSONS OR BUSINESSES**

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

### **SIGNIFICANT EFFECT ON HOUSING COSTS**

No significant effect.

### **FEDERAL REGULATIONS**

Proposed Regulation 1705 has no comparable federal regulations.

### **AUTHORITY**

Section 7051, Revenue and Taxation Code.

## **REFERENCE**

Section 6596, Revenue and Taxation Code

## **CONTACT**

Questions regarding the substance of the proposed regulation should be directed to Ms. Lisa Andrews (916) 322-5989, at 450 N Street, Sacramento, CA 95814, e-mail [Lisa.Andrews@boe.ca.gov](mailto:Lisa.Andrews@boe.ca.gov) or by mail at State Board of Equalization, Attn: Lisa Andrews, MIC:50, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0050.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, telephone (916) 445-2130, fax (916) 324-3984, e-mail [Richard.Bennion@boe.ca.gov](mailto:Richard.Bennion@boe.ca.gov) or by mail at State Board of Equalization, Attn: Rick Bennion MIC:81, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0080.

## **ALTERNATIVES CONSIDERED**

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, or be as effective as and less burdensome to affected private persons than the proposed action.

## **AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION**

The Board has prepared an initial statement of reasons and an underscored version (express terms) of the proposed regulation. Both of these documents and all information on which the proposal is based are available to the public upon request. The Rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulation are available on the Internet at the Board's web site <http://www.boe.ca.gov>.

## **AVAILABILITY OF FINAL STATEMENT OF REASONS**

The final statement of reasons will be made available on the Internet at the Board's web site following its public hearing of the proposed regulation. It is also available for your inspection at 450 N Street, Sacramento, California.

## **ADDITIONAL COMMENTS**

Following the hearing, the State Board of Equalization may in accordance with law adopt the proposed regulation if the text remains substantially the same as described in the text originally made available to the public. If the State Board of Equalization makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the regulation. The text of any modified regulation will be mailed to those interested parties who

October 17, 2008

commented on the proposed regulatory action orally or in writing or who asked to be informed of such changes. The modified regulation will be available to the public from Mr. Bennion. The State Board of Equalization will consider written comments on the modified regulation for fifteen days after the date on which the modified regulation is made available to the public.

Sincerely,

A handwritten signature in cursive script, reading "Diane G. Olson".

Diane G. Olson, Chief  
Board Proceedings Division

DGO:reb

Enclosures

**Initial Statement of Reasons  
Overview/Non-Controlling Summary**

**PROPOSED REGULATION 1705, RELIEF *from Liability*,**

Proposed Regulation 1705 is proposed to be revised to explain when a franchisee is relieved from the liability to pay tax based on erroneous written advice provided to its franchisor?

**Specific Purpose**

The purpose of the proposed regulation is to interpret, implement, and make specific Revenue and Taxation Code section 7261. This regulation is necessary to provide guidance to taxpayers affected by this statute.

**Factual Basis**

Revenue and Taxation Code section (Section) 6596 provides relief from tax, interest, and penalty charges due on a transaction if the Board determines that the taxpayer failed to pay tax because it reasonably relied on erroneous written advice from the Board. For relief to apply, the Board must have received a written request for advice on the transaction, the request must have identified the taxpayer to whom the advice applied, and the request must have fully described the facts and circumstances of the transaction. Section 6596 subdivision (d) states that, “[o]nly the person making the written request shall be entitled to rely on the board’s written advice to that person.” Accordingly, taxpayers cannot obtain relief by relying on a written opinion given to another business, even if the transactions are similar. However, a taxpayer may rely on advice given to the taxpayer’s representative provided that the representative identifies the person for whom the advice is requested. Regulation 1705, *Relief from Liability*, is based upon Section 6596 and explains its provisions in more detail. In 1999, Regulation 1705 was amended to extend Section 6596 relief to trade or industry association members when an association requests written advice on behalf of its members. In order to obtain relief under Section 6596, the members must be identified in the association’s request for advice. Proposed regulatory changes to sales and use tax regulation 1705, *will* explain that similar relief applies to franchisees and franchisors.

Pursuant to Government Code section 11346.5(a)(8), the Board of Equalization finds that the adoption of the proposed regulation will not have a significant adverse economic impact on private businesses or persons. The regulation is proposed to interpret, implement, and make specific the authorizing statutes. These changes will clarify the interpretation or administration of the sales and use tax laws. Therefore, the Board has determined that these changes will not have a significant adverse economic impact on private businesses or persons.

## **Proposed amendments to Regulation 1705**

### **Regulation 1705. RELIEF FROM LIABILITY.**

*Reference: Section 6596, Revenue and Taxation Code.*

**(a) IN GENERAL.** A person may be relieved from the liability for the payment of sales and use taxes, including any penalties and interest added to those taxes, when that liability resulted from the failure to make a timely return or a payment and such failure was found by the Board to be due to reasonable reliance on:

- (1) Written advice given by the Board under the conditions set forth in subdivision (b) below; or
- (2) Written advice in the form of an annotation or legal ruling of counsel under the conditions set forth in subdivision (d) below; or
- (3) Written advice given by the Board in a prior audit of that person under the conditions set forth in subdivision (c) below. As used in this regulation, the term "prior audit" means any audit conducted prior to the current examination where the issue in question was examined.

Written advice from the Board may only be relied upon by the person to whom it was originally issued or a legal or statutory successor to that person. Written advice from the Board which was received during a prior audit of the person under the conditions set forth in subdivision (c) below, may be relied upon by the person audited or by a legal or statutory successor to that person.

The term "written advice" includes advice that was incorrect at the time it was issued as well as advice that was correct at the time it was issued, but, subsequent to issuance, was invalidated by a change in statutory or constitutional law, by a change in Board regulations, or by a final decision of a court of competent jurisdiction. Prior written advice may not be relied upon subsequent to: (1) the effective date of a change in statutory or constitutional law and Board regulations or the date of a final decision of a court of competent jurisdiction regardless that the Board did not provide notice of such action; or (2) the person receiving a subsequent writing notifying the person that the advice was not valid at the time it was issued or was subsequently rendered invalid. As generally used in this regulation, the term "written advice" includes both written advice provided in a written communication under subdivision (b) below and written advice provided in a prior audit of the person under subdivision (c) below.

#### **(b) ADVICE PROVIDED IN A WRITTEN COMMUNICATION.**

(1) Advice from the Board provided to the person in a written communication must have been in response to a specific written inquiry from the person seeking relief from liability, or from his or her representative. To be considered a specific written inquiry for purposes of this regulation, representatives must identify the specific person for whom the advice is requested. Such inquiry must have set forth and fully described the facts and circumstances of the activity or transactions for which the advice was requested.

(2) A person may write to the Board and propose a use tax reporting methodology for qualified purchases subject to use tax. If the Board concludes that the reporting method reflects the person's use tax liability for the defined population, then the Board may write to the person approving the use of the reporting method. The approval shall be subject to certain conditions. The following conditions shall be included in the approval:

- (A) The defined population of the purchases that will be included in the reporting method;
- (B) The percentage of purchases of the defined population that is subject to tax;
- (C) The length of time the writing shall remain in effect;
- (D) The definition of a significant or material change that will require rescinding the approved reporting method; and
- (E) Other conditions as required.

The written approval of the use tax reporting methodology is void and shall not be relied upon for the purposes of Revenue and Taxation Code section 6596 if the taxpayer files a claim for refund for tax that had been reported based upon this reporting method.

**(c) WRITTEN ADVICE PROVIDED IN A PRIOR AUDIT.** Presentation of the person's books and records for examination by an auditor shall be deemed to be a written request for the audit report. If a prior audit report of the person requesting relief contains written evidence which demonstrates that the issue in question was examined, either in a sample or census (actual) review, such evidence will be considered "written advice from the Board" for purposes of this regulation. A census (actual) review, as opposed to a sample review, involves examination of 100% of the person's transactions pertaining to the issue in question. For written advice contained in a prior audit of the person to apply to the person's activity or transaction in question, the facts and conditions relating to the activity or transaction must not have changed from those which occurred during the period of operation in the prior audit. Audit

## Proposed amendments to Regulation 1705

comments, schedules, and other writings prepared by the Board that become part of the audit work papers which reflect that the activity or transaction in question was properly reported and no amount was due are sufficient for a finding for relief from liability, unless it can be shown that the person seeking relief knew such advice was erroneous.

**(d) ANNOTATIONS AND LEGAL RULINGS OF COUNSEL.** Advice from the Board provided to the person in the form of an annotation or legal ruling of counsel shall constitute written advice only if:

(1) The underlying legal ruling of counsel involving the fact pattern at issue is addressed to the person or to his or her representative under the conditions set forth in subdivision (b) above; or

(2) The annotation or legal ruling of counsel is provided to the person or his or her representative by the Board within the body of a written communication and involves the same fact pattern as that presented in the subject annotation or legal ruling of counsel.

**(e) TRADE OR INDUSTRY ASSOCIATIONS OR FRANCHISORS.** A trade or industry association requesting advice on behalf of its member(s) must identify and include the specific member name(s) for whom the advice is requested for relief from liability under this regulation. A franchisor requesting advice on behalf of its franchisee(s) must identify and include the specific franchisee name(s) for whom the advice is requested for relief from liability under this regulation.

For an identified trade or industry member or franchisee to receive relief based on advice provided in the written communication to the trade or industry association or franchisor, the activity or transactions in question must involve the same facts and circumstances as those presented in the written inquiry by the association or franchisor.

## Regulation History

**Type of Regulation:** Sales and Use Tax

**Regulation:** 1705

**Title:** *Relief from Liability*

**Preparation:** Lynn Whitaker

**Legal Contact:** Christine Bisauta

Amendments are proposed to be adopted to clarify when a franchisee is relieved from sales or use tax liability based on erroneous advice provided to its franchisor.

### History of Proposed Regulation:

September 16, 2008	BTC, Board Authorized Publication (Vote 5-0)
July 17, 2008	Second IP meeting
May 16, 2008	Last day for IP to respond to Initial Discussion Paper
April 29, 2008	First Interested Parties (IP) meeting

**Sponsor:** NA

**Support:** NA

**Oppose:** NA

**NOTICE PUBLICATION/REGULATIONS SUBMISSION**

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-08)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2008-1117-03	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

NOV 17 2006 NOV 28 2008 Office of Administrative Law	REGULATIONS
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**AGENCY WITH RULEMAKING AUTHORITY**  
 State Board of Equalization

AGENCY FILE NUMBER (if any)

**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE Relief from Liability		TITLE(S) 18	FIRST SECTION AFFECTED 1705	2. REQUESTED PUBLICATION DATE November 28, 2008
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input checked="" type="checkbox"/> Other	4. AGENCY CONTACT PERSON Rick Bennion		TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S)	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
------------------------------	--

SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND
	REPEAL
TITLE(S)	

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective 30th day after filing with Secretary of State <input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____		

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Other (Specify) _____	<input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal
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7. CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE

TYPED NAME AND TITLE OF SIGNATORY

BY NOTICE dated October 17, 2008, and published in the October 17, 2008, California Regulatory Notice Register 2008, Number 42-Z, the State Board of Equalization, announced that it would conduct a public hearing on December 16, 2008, to consider proposed amendments to Regulation 1705, *Relief of Liability* in Title 18, Division 2, Chapter 4 of the California Code of Regulations relating to sales and use tax. A decision was made to rescheduled the public hearing on the proposed regulation to be held on December 17, 2008, in Room 121, 450 N Street, Sacramento, CA at 9:30 a.m., or as soon thereafter as the matter may be heard.

Questions regarding the substance of the proposed regulatory action should be directed to Ms. Christine Bisauta, (916) 323-2549, email [Christine.Bisauta@boe.ca.gov](mailto:Christine.Bisauta@boe.ca.gov), or by mail to: State Board of Equalization, Attn: Christine Bisauta, MIC:82, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Richard Bennion, Regulations Coordinator, telephone (916) 445-2130, fax (916) 324-3984, e-mail [Richard.Bennion@boe.ca.gov](mailto:Richard.Bennion@boe.ca.gov) or by mail at State Board of Equalization, Attn: Richard Bennion, MIC:80, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0080 by December 17, 2008.



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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JUDY CHU  
Fourth District, Los Angeles

JOHN CHIANG  
State Controller, Sacramento

RAMON J. HIRSIG  
Executive Director

November 28, 2008

STATE BOARD OF EQUALIZATION  
NOTICE OF RESCHEDULED PUBLIC HEARING

*Regulation 1705, Relief from Liability*

BY NOTICE dated October 17, 2008, and published in the October 17, 2008, California Regulatory Notice Register 2008, Number 42-Z, the State Board of Equalization, announced that it would conduct a public hearing on December 16, 2008, to consider proposed amendments to Regulation 1705, *Relief of Liability* in Title 18, Division 2, Chapter 4 of the California Code of Regulations relating to sales and use tax. A decision was made to reschedule the public hearing on the proposed regulation to be held on **December 17, 2008**, in Room 121, 450 N Street, Sacramento, CA at 9:30 a.m., or as soon thereafter as the matter may be heard.

Questions regarding the substance of the proposed regulatory action should be directed to Ms. Christine Bisauta, (916) 323-2549, email [Christine.Bisauta@boe.ca.gov](mailto:Christine.Bisauta@boe.ca.gov), or by mail to: State Board of Equalization, Attn: Christine Bisauta, MIC:82, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Richard Bennion, Regulations Coordinator, telephone (916) 445-2130, fax (916) 324-3984, e-mail [Richard.Bennion@boe.ca.gov](mailto:Richard.Bennion@boe.ca.gov) or by mail at State Board of Equalization, Attn: Richard Bennion, MIC:80, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0080 by December 17, 2008.

STATE BOARD OF EQUALIZATION

Diane G. Olson, Chief  
Board Proceedings Division

stantive or the resulting regulations are sufficiently related to the text made available to the public so that the public was adequately placed on notice that the regulations as modified could result from those originally proposed. The text of the regulations as modified will be made available to the public at least 15 days prior to the date on which the amendments to the regulations are adopted. Requests for copies of any modified regulations should be sent to the attention of the agency officer named below.

#### AVAILABILITY OF FINAL STATEMENT OF REASONS

When the final statement of reasons is available, it can be obtained by contacting the agency officer named below, or by accessing the Franchise Tax Board's website at <http://www.ftb.ca.gov>.

#### AVAILABILITY OF DOCUMENTS ON THE INTERNET

This notice, the initial statement of reasons, and the express terms of the proposed regulations are also available at the Franchise Tax Board's website at <http://www.ftb.ca.gov>.

#### ADDITIONAL COMMENTS

If you plan on attending or making an oral presentation at the regulation hearing, please contact the agency officer named below. The hearing room will be accessible to persons with physical disabilities. Any person who is in need of a language interpreter, including sign language, should contact the officer named below at least two weeks prior to any scheduled hearing so that the services of an interpreter may be arranged.

#### CONTACT

All inquires concerning this notice or any request for a public hearing should be directed to Colleen Berwick at the Franchise Tax Board, Legal Department, P.O. Box 1720, Rancho Cordova, CA 95741-1720; Tel.: (916) 845-3306; Fax: (916) 845-3648; E-Mail: [colleen.berwick@ftb.ca.gov](mailto:colleen.berwick@ftb.ca.gov). In addition, all questions on the substance of the proposed amendments to the regulations can be directed to Adam Susz, Tax Counsel, at the Franchise Tax Board, Legal Department, P.O. Box 1720, Rancho Cordova, CA 95741-1720; Tel.: (916) 845-7066; Fax: (916) 855-5753; E-Mail: [Adam.Susz@ftb.ca.gov](mailto:Adam.Susz@ftb.ca.gov).

### GENERAL PUBLIC INTEREST

#### BOARD OF EQUALIZATION

BY NOTICE dated October 17, 2008, and published in the October 17, 2008, California Regulatory Notice Register 2008, Number 42-Z, the State Board of Equalization announced that it would conduct a public hearing on December 16, 2008, to consider proposed amendments to Regulation 1506, *Miscellaneous Services Enterprises* and Regulation 1524, *Manufacturers of Personal Property* in Title 18, Division 2, Chapter 4 of the California Code of Regulations relating to sales and use tax. A decision was made to reschedule the public hearing on the proposed regulation to be held on December 17, 2008, in Room 121, 450 N Street, Sacramento, CA at 9:30 a.m., or as soon thereafter as the matter may be heard.

Questions regarding the substance of the proposed regulatory action should be directed to Mr. Robert Tucker, (916) 322-2976, email [Robert.Tucker@boe.ca.gov](mailto:Robert.Tucker@boe.ca.gov), or by mail to: State Board of Equalization, Attn: Robert Tucker, MIC:82, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Richard Bennion, Regulations Coordinator, telephone (916) 445-2130, fax (916), 324-3984, e-mail [Richard.Bennion@boe.ca.gov](mailto:Richard.Bennion@boe.ca.gov) or by mail at State Board of Equalization, Attn: Richard Bennion, MIC:80, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0080 by December 17, 2008.

#### BOARD OF EQUALIZATION

BY NOTICE dated October 17, 2008, and published in the October 17, 2008, California Regulatory Notice Register 2008, Number 42-Z, the State Board of Equalization announced that it would conduct a public hearing on December 16, 2008, to consider proposed amendments to Regulation 1705, *Relief of Liability* in Title 18, Division 2, Chapter 4 of the California Code of Regulations relating to sales and use tax. A decision was made to reschedule the public hearing on the proposed regulation to be held on December 17, 2008, in Room 121, 450 N Street, Sacramento, CA at 9:30 a.m., or as soon thereafter as the matter may be heard.

Questions regarding the substance of the proposed regulatory action should be directed to Ms. Christine Bisauta, (916) 323-2549, email [Christine.Bisauta@boe.ca.gov](mailto:Christine.Bisauta@boe.ca.gov) or by mail to State Board of Equalization, Attn: Christine Bisauta, MIC:82, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Richard Bennion, Regulations Coordinator, telephone (916) 445-2130, fax (916) 324-3984, e-mail [Richard.Bennion@boe.ca.gov](mailto:Richard.Bennion@boe.ca.gov) or by mail at State Board of Equalization, Attn: Richard Bennion, MIC:80, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0080 by December 17, 2008.

Sharon Siozon, Research Analyst II, at (916) 322-1760.

Sincerely,

/s/

Stephen M Bantillo  
Assistant Director  
for Recycling

## **RULEMAKING PETITION DECISION**

### **DEPARTMENT OF CONSERVATION**

November 10, 2008

Mr. Al Solis  
West Coast Recycling d.b.a.  
Mission Recycling  
1341 Mission Boulevard  
Pomona, CA 91766

#### **PETITION TO LOWER LOAD LIMITS FOR PLASTIC AND ALUMINUM BEVERAGE CONTAINERS**

Dear Mr. Solis:

Thank you for your letter, received by the Department of Conservation (Department), Division of Recycling (Division) on October 23, 2008, to amend regulations relating to the Beverage Container Recycling Program. The Division appreciates the interest and concern you have expressed in this petition. The issues you raised in your letter are of immediate concern to our program. I agree that there is a need to review lower daily load limits for plastic and aluminum beverage containers. We will also explore the feasibility of establishing restrictions on flattened containers.

Pursuant to Government Code Sections 11340.6 and 11340.7 of the California Administrative Procedure Act, your petition to amend Division regulations is accepted. The Department is filing this decision with the Office of Administrative Law for publication in the California Regulatory Notice Register. This decision will begin the rulemaking process which will include a forty-five (45) day period for the public to submit comments relating to the proposed regulations.

Thank you for bringing this issue to my attention and suggesting a solution to a problem recyclers face identifying out-of-state containers being redeemed at recycling centers. If you have any questions regarding the proposed regulations or regulatory process, please contact

## **SUMMARY OF REGULATORY ACTIONS**

### **REGULATIONS FILED WITH SECRETARY OF STATE**

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2008-1017-01  
Board of Equalization  
Meal Replacement Products

This regulatory action amends existing regulation Sections 1602 "Food Products" and 1591 "Medicines and Medical Devices" to specify dietary supplements and adjuncts furnished to a patient by a physician as part of a medically supervised weight loss program to treat obesity qualify as medicine. The sale and use of these medicines are exempt from tax as explained in regulation Section 1591(e)(7).

Title 18  
California Code of Regulations  
AMEND: 1591, 1602  
Filed 11/14/2008  
Effective 12/14/2008  
Agency Contact: Rick Bennion (916) 445-2130

File# 2008-1006-01  
CALIFORNIA HORSE RACING BOARD  
Qualifications for License as Horse Owner

The California Horse Racing Board (Board) seeks to amend section 1505 of Title 4 of the California Code of Regulations. The proposed amendment provides that an applicant for renewal of a horse owner license whose license is in good standing with the Board, but who does not currently own a properly registered race horse that is

**I am speaking today in favor of the clarification to the statute identifying Franchisors as part of a Trade Group or Association for the purpose of exempting them from liability subject to their compliance with the terms of the statute. However certain problems occur if this action passes that need to be mitigated. A trapdoor is opened into which a Franchisor will fall as the Franchisor could not have possibly have known of the obligation. We want that trapdoor closed.**

**Here is the trapdoor being opened: a franchisee is told they owe back taxes on services performed, that the State originally indicated at the conclusion of an audit of the Franchisees were not taxable. The State audits again changing its position on the prior audit and determining the services now taxable. And now the State informs the audited franchise and other franchisees (relying on that prior audit) that in order to be protected prior to any change in the tax ruling following the earlier audit that the Franchisor should have written a letter to the State specifically naming the franchisees that relied on the earlier ruling following the audit. (This "exemption" was for associations and trade groups but did not include franchisors specifically. When the Franchisor questioned the State the Franchisor was informed that the State always "assumed" the Statute included Franchisors. To clarify matters the State is now including the term Franchisors in the statute or is deciding to at this meeting. This all begs the following confusing bit of logic:)**

**The franchisees following the earlier ruling after the audit of the identical issue now fall into the trapdoor because the franchisor did not identify the franchisees relying on the ruling following the audit. How could any franchisor know to write a letter that they had no way of knowing they had to write since the interpretation and ruling to include Franchisors in the definition of associations is added after the fact? The Franchisor could never have known (1) about the unwritten assumption and (2) that the state was going to make such an assumption before it was established as a requirement. Furthermore, the letter that the statute requires be written, would be for an exemption on a tax the Franchisor reasonably believed it did not owe at the time. Its reasonable belief was based on the ruling in the prior audit of the identical issue for a franchisee in the identical business.**

Once informed that a different audit ruling was made for the identical issue with the same franchisee and that contradicted the earlier ruling the Franchisor immediately complied (even though they still maintained that the new ruling was incorrect with regard to subjecting the service fee to a tax.) However, complying anyway, the Franchisor is told that the new tax obligation is retroactive to the period prior to their notification of the change in the tax ruling. The Franchisor was further informed that the State actually changed their mind on taxing services provided, prior to notifying the Franchisor, in an earlier audit of one of the Franchisor's franchisees. When the Franchisor asked which franchisee was audited and when it occurred the information could not be given to them as it was confidential to the taxpayer only. Thus the Franchisor would have no way of knowing the information and could not have informed the other franchisees.

This is a very complex issue: an auditor made a determination that the service was not taxable, another auditor in a later year re-determined it was taxable and the State ruled the earlier audit was incorrect. In the interim all the franchisees relied on that earlier audit.

We are asking that steps be taken to handle this result by allowing an exemption for those franchisees who relied on the prior audit ruling for the identical issue.

Alternatively, the multiple audits now occurring should be postponed until the conclusion of the appeals to come, first on the legitimacy of taxing services in the first place, and then, assuming the Franchisor loses that argument, on making such a ruling retroactive to a period before they were notified of the change . Furthermore, all the appeals that the franchisees will make and are making, should be also be heard en masse for efficiency reasons for the State, the franchisees and the Franchisor since the audits are identical in their scope, different tax id numbers notwithstanding.

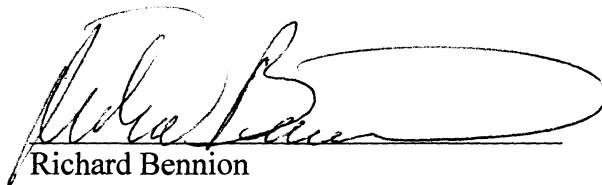
As a side note, I did appreciate learning that the statute provides that successors to the taxpayer, who relied on the earlier ruling, are exempt for the retroactive liability. In this case the State has been so informed of their successor status. All of their obligations affected by the change in the tax ruling will hopefully be dismissed without further obligation on those successor franchisees. However, in this example, what is good for the successors is good for the rest of the subject franchisees as well.

**This presentation is made as a request that your decision today does not unfairly create a liability against which franchisees and Franchisors could not possibly have defended themselves. In other words, we ask that the trapdoor be closed and that the Franchisors be protected from retroactively being obligated to a tax for not complying with a statute requiring the letter be written as a condition for release from liability and enjoy the same release from liability enjoyed by those with successor status.**

## **Statement of Compliance**

The State Board of Equalization, in process of adopting Sales and Use Tax Regulation 1705, Reporting Methods for Grocers, did comply with the provision of Government Code section 11346.4(a)(1) through (4). A notice to interested parties was mailed on October 17, 2008, 60 days prior to the public hearing.

January 12, 2008

A handwritten signature in black ink, appearing to read 'Richard Bennion', written over a horizontal line.

Richard Bennion  
Regulations Coordinator  
State Board of Equalization

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N Street, Room 121

Sacramento, California

REPORTER'S TRANSCRIPT

DECEMBER 17, 2008

ITEM F4

PUBLIC HEARINGS

PROPOSED AMENDMENTS TO SALES AND USE TAX REGULAITON 1705

Reported by: Beverly D. Toms

No. CSR 1662

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P R E S E N T

For the Board  
of Equalization:

Judy Chu  
Chairwoman

Betty Yee  
Vice-Chair

Bill Leonard  
Member

Michelle Steel  
Member

Marcy Jo Mandel  
Appearing for John  
Chiang, State Controller  
(per Government Code  
Section 7.9)

Diane Olson  
Chief, Board  
Proceedings Division

Board of Equalization  
Staff:

Christine Bisauta

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INDEX OF SPEAKERS

Page

SPEAKER:

LINDSAY CRAINE

4

---oOo---

Sacramento, California

December 17, 2008

---oOO---

DR. CHU: Okay, F4, Proposed Amendments to Sales and Use Tax Regulation 1705, Relief from Liability.

MS. BISAUTA: Good morning, Madam Chair, Members of the Board, I'm Christine Bisauta from the Board's Legal Department, requesting adoption of the proposed amendment to Regulation 1705.

This amendment clarifies when a fran -- franchisee is relieved from the liability to pay tax based on erroneous written advice provided to a franchisor.

This proposed amendment was heard by the Business Taxes Committee on September 16, 2008 and was approved for publication.

DR. CHU: Okay, there is a speaker, Lindsay Craine, Executive Assistant of Color Me Mine.

---oOo---

LINDSAY CRAINE

MS. CRAINE: Good morning. I'm speaking on -- I'm speaking on behalf of my boss who's too ill to come today, so I'm going to read a letter that he wrote.

I'm speaking today in favor of the clarification to the statute identifying franchisors as part of the trade group or association for the purpose of exempting them from liability subject to their

1 compliance with the terms of the statute.

2           However, certain problems occur if this action  
3 passes that need to be mitigated. Here is the trap door  
4 that is being opened. A franchisee is told they owe  
5 back taxes on services performed that the State  
6 originally indicated at the conclusion of an audit of  
7 the franchisee were not taxable.

8           The State audits again, changing its position  
9 on the prior audit and determines the service is now  
10 taxable. And now the State informs the audited  
11 franchise and other franchisees relying on the prior  
12 audit that in order to be protected prior to any change  
13 in the tax ruling following the earlier audit, that the  
14 franchisor should have written a letter to the State  
15 specifically naming the franchisees that relied on the  
16 earlier ruling following the audit.

17           This exemption was for associations and trade  
18 groups but did not include franchisors, specifically.  
19 When the franchisor questioned the State, the franchisor  
20 was informed that the State always assumed the State  
21 included franchisors.

22           To clarify matters, the State is now including  
23 the term "franchisors" in the statute or is deciding to  
24 at this meeting. This all begs the following confusing  
25 bit of logic.

26           The franchisees following the earlier ruling  
27 after the audit of the identical issue now fall through  
28 the trap door because the franchisor did not identify

1 the franchisees relying on the ruling following the  
2 audit.

3           How could any franchisor know to write the  
4 letter that they had no way of knowing they had to  
5 write, since the interpretation and ruling to include  
6 franchisors in the definition of associations is added  
7 after the fact? The franchisor could never have known,  
8 one, about the unwritten assumption and, two, that the  
9 State was going to make such an assumption before it was  
10 established as a requirement.

11           Furthermore, the letter that the statute  
12 requires be written would be for an exemption on a tax  
13 the franchisor reasonably believed it did not owe at the  
14 time.

15           Its reasonable belief was based on a ruling in  
16 the prior audit of the identical issue for a franchisee  
17 in the identical business. Once informed that a  
18 different audit ruling was made for the identical issue  
19 with the same franchisee and it contradicted the earlier  
20 ruling, the franchisor immediately complied, even though  
21 they still maintain that the new ruling was incorrect  
22 with regard to subjecting the service fee to a tax.

23           However, complying, anyway, the franchisor is  
24 told that the new tax obligation is retroactive to the  
25 period prior to the notification of the change in the  
26 tax ruling.

27           The franchisor was further informed that the  
28 State actually changed their mind on taxing services

1 provided prior to notifying the franchisor in an earlier  
2 audit of one of the franchisor's franchisees.

3 When the franchisor asked which franchisee was  
4 audited and when it occurred, the information could not  
5 be given to them as it was confidential to the taxpayer  
6 only. Thus the franchisor would have no way of knowing  
7 the information and could not have informed the other  
8 franchisees.

9 This is a very complex issue. An auditor made  
10 a determination that the service was not taxable.  
11 Another auditor in a later year redetermined it was  
12 taxable and the State ruled the earlier audit was  
13 incorrect.

14 In the interim all the franchise -- all the  
15 franchisees relied on that earlier audit. We are asking  
16 that steps be taken to handle this result by allowing an  
17 exemption for those franchisees who relied on the prior  
18 audit ruling for the identical issue.

19 Alternatively, the multiple audits now  
20 occurring should be postponed until the conclusion of  
21 the appeals to come. First on the legitimacy of taxing  
22 services in the first place. And then assuming the  
23 franchisor loses that argument, making such a ruling  
24 retroactive to a period before they were notified of the  
25 change.

26 MS. OLSON: Time has expired.

27 MS. CRAINE: I just have one more paragraph.  
28 Can I just buzz through it?

1 DR. CHU: Okay. You may continue.

2 MS. CRAINE: Furthermore, all the appeals that  
3 the franchisees will make and are making should also be  
4 heard en mass for efficiency reasons for the State.  
5 The franchisee's and the franchisor's, since the audits  
6 are identical in their scope, different tax I. D.  
7 numbers notwithstanding.

8 As a side note, I did appreciate learning the  
9 State -- statute provides as successors to the taxpayer  
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12 so informed of their successor status. All of their  
13 obligations affected by the change in the tax ruling  
14 will hopefully be dismissed without further obligation  
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16 However, in this example what is good for the  
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20 your decision today does not unfairly create a liability  
21 against which franchisees and franchisors could not  
22 possibly have defended themselves.

23 In other words, we ask that the trap door be  
24 closed and that the franchisors be protected from  
25 retroactively being obligated to a tax for not complying  
26 with the statute requiring the letter be written as a  
27 condition for release from liability and enjoy the same  
28 release from liability enjoyed with those with successor

1 status.

2 DR. CHU. Okay, Ms. Bisauta, can you respond?

3 MS. BISAUTA: There's a number of different  
4 issues and a lot of this all came in -- throughout the  
5 interested parties process and are addressed in the  
6 issue papers that were done. I don't know that I'll hit  
7 on all of them.

8 But I think the biggest concern this particular  
9 taxpayer had had was with respect to audit and the 6596  
10 protection as it relates to franchisees and franchisors.

11 In this particular -- I don't -- I don't know  
12 that I should be -- I don't want to necessarily get into  
13 all the details of this particular taxpayer, but as --  
14 as a general situation, they bring up the situation  
15 where an individual franchisee is audited and erroneous  
16 advice is given as a result of that audit, which we  
17 later discover. And, unfortunately, under 6596  
18 erroneous advice in an audit is limited to the person  
19 that was given the advice or their successors.

20 And so, our ability to change the regulation to  
21 address that situation, it wasn't really part of this  
22 process. We focus more on the issue of providing a  
23 franchisee -- a franchisor requests a legal opinion or  
24 written advice, they can list all the franchisee names  
25 and that advice is distributed to all those franchisees  
26 so that they can rely on it.

27 Our hands are somewhat tied with respect to the  
28 audit situation and all other franchisees being able to

1     rely on the erroneous advice given in an audit of one  
2     particular franchisee, because they're separate  
3     persons.

4             MS. STEEL: Can I ask them what --

5             DR. CHU: Ms. Steel.

6             MS. STEEL: So when you -- other franchisees  
7     getting a copy of those letters then -- you know, then  
8     they do the exactly same practice with that advice.  
9     Then they are not going to be -- I mean --

10            MS. BISAUTA: There's two different situations.  
11     There's advice -- erroneous advice given in an audit and  
12     then there's advice given when they've written in to  
13     find out --

14            MS. STEEL: What's the difference here?

15            MS. BISAUTA: -- how it's taxable.

16            MS. STEEL: It's the same letters.

17            MS. BISAUTA: The law provides --

18            MS. STEEL: That's why that, you know, we were  
19     talking about, that everything has to be consistent and  
20     right answers has to go out. If it's wrong answer, all  
21     these franchisees that, you know, you get like four or  
22     five hundred franchisees, they are getting same letters  
23     because it's same under franchisor, then -- you know,  
24     they have to be saved.

25            I mean, what -- what's the difference between  
26     one franchisee and franchisor, you know, whatever it  
27     comes? I mean, why -- why there is the difference  
28     because it's a letter coming out from the tax agency.

1 It has to have -- that has to be followed --

2 MS. BISAUTA: Absolutely --

3 MS. STEEL: -- by these taxpayers.

4 MS. BISAUTA: -- and I complete -- I completely  
5 agree and that's what this regulation is clarifying.

6 MS. STEEL: Right.

7 MS. BISAUTA: That if the franchisor writes in,  
8 lists all the names of the franchisees, they all get a  
9 copy of the letter. Everybody gets to rely on it the  
10 same.

11 This particular situation has to deal with  
12 written advice that's given in an audit. And our rules  
13 are -- are slightly different in respect to that. Only  
14 that particular franchisee and their successor can rely  
15 on that advice. The franchisor can't go and distribute  
16 that written advice to all the other franchisees and --  
17 and have them -- have that be protected.

18 MS. STEEL: Why not? If it's all same  
19 companies under the same direction then why it's not?

20 MS. BISAUTA: They're all different persons  
21 under the law. They're all different permits. Each  
22 franchisee has its own permits. Just because they're  
23 related or have the same name -- I don't know if I'm --

24 MR. TUCKER: Ms. Steel, under Revenue and  
25 Taxation Code 6596, the only person who can rely on that  
26 advice is the person to whom it's written and to whom  
27 it's provided.

28 So, if a letter were written to me, Ms. Bisauta

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N Street, Room 121

Sacramento, California

REPORTER'S TRANSCRIPT

DECEMBER 17, 2008

ITEM F4

PUBLIC HEARINGS

PROPOSED AMENDMENTS TO SALES AND USE TAX REGULATION 1705

Reported by: Beverly D. Toms

No. CSR 1662

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P R E S E N T

For the Board  
of Equalization:

Judy Chu  
Chairwoman

Betty Yee  
Vice-Chair

Bill Leonard  
Member

Michelle Steel  
Member

Marcy Jo Mandel  
Appearing for John  
Chiang, State Controller  
(per Government Code  
Section 7.9)

Diane Olson  
Chief, Board  
Proceedings Division

Board of Equalization  
Staff:

Christine Bisauta

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INDEX OF SPEAKERS

Page

SPEAKER:

LINDSAY CRAINE

4

---oOo---

Sacramento, California

December 17, 2008

---oOO---

DR. CHU: Okay, F4, Proposed Amendments to Sales and Use Tax Regulation 1705, Relief from Liability.

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---oOo---

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21 against which franchisees and franchisors could not  
22 possibly have defended themselves.

23 In other words, ~~we~~ ask that the trap door be  
24 closed and that the franchisors be protected from  
25 retroactively being obligated to a tax for not complying  
26 with the statute requiring the letter be written as a  
27 condition for release from liability and enjoy the same  
28 release from liability enjoyed with those with successor

1 status.

2 DR. CHU. Okay, Ms. Bisauta, can you respond?

3 MS. BISAUTA: There's a number of different  
4 issues and a lot of this all came in -- throughout the  
5 interested parties process and are addressed in the  
6 issue papers that were done. I don't know that I'll hit  
7 on all of them.

8 But I think the biggest concern this particular  
9 taxpayer had had was with respect to audit and the 6596  
10 protection as it relates to franchisees and franchisors.

11 In this particular -- I don't -- I don't know  
12 that I should be -- I don't want to necessarily get into  
13 all the details of this particular taxpayer, but as --  
14 as a general situation, they bring up the situation  
15 where an individual franchisee is audited and erroneous  
16 advice is given as a result of that audit, which we  
17 later discover. And, unfortunately, under 6596  
18 erroneous advice in an audit is limited to the person  
19 that was given the advice or their successors.

20 And so, our ability to change the regulation to  
21 address that situation, it wasn't really part of this  
22 process. We focus more on the issue of providing a  
23 franchisee -- a franchisor requests a legal opinion or  
24 written advice, they can list all the franchisee names  
25 and that advice is distributed to all those franchisees  
26 so that they can rely on it.

27 Our hands are somewhat tied with respect to the  
28 audit situation and all other franchisees being able to

1     rely on the erroneous advice given in an audit of one  
2     particular franchisee, because they're separate  
3     persons.

4             MS. STEEL: Can I ask them what --

5             DR. CHU: Ms. Steel.

6             MS. STEEL: So when you -- other franchisees  
7     getting a copy of those letters then -- you know, then  
8     they do the exactly same practice with that advice.  
9     Then they are not going to be -- I mean --

10            MS. BISAUTA: There's two different situations.  
11     There's advice -- erroneous advice given in an audit and  
12     then there's advice given when they've written in to  
13     find out --

14            MS. STEEL: What's the difference here?

15            MS. BISAUTA: -- how it's taxable.

16            MS. STEEL: It's the same letters.

17            MS. BISAUTA: The law provides --

18            MS. STEEL: That's why that, you know, we were  
19     talking about, that everything has to be consistent and  
20     right answers has to go out. If it's wrong answer, all  
21     these franchisees that, you know, you get like four or  
22     five hundred franchisees, they are getting same letters  
23     because it's same under franchisor, then -- you know,  
24     they have to be saved.

25            I mean, what -- what's the difference between  
26     one franchisee and franchisor, you know, whatever it  
27     comes? I mean, why -- why there is the difference  
28     because it's a letter coming out from the tax agency.

1 It has to have -- that has to be followed --

2 MS. BISAUTA: Absolutely --

3 MS. STEEL: -- by these taxpayers.

4 MS. BISAUTA: -- and I complete -- I completely  
5 agree and that's what this regulation is clarifying.

6 MS. STEEL: Right.

7 MS. BISAUTA: That if the franchisor writes in,  
8 lists all the names of the franchisees, they all get a  
9 copy of the letter. Everybody gets to rely on it the  
10 same.

11 This particular situation has to deal with  
12 written advice that's given in an audit. And our rules  
13 are -- are slightly different in respect to that. Only  
14 that particular franchisee and their successor can rely  
15 on that advice. The franchisor can't go and distribute  
16 that written advice to all the other franchisees and --  
17 and have them -- have that be protected.

18 MS. STEEL: Why not? If it's all same  
19 companies under the same direction then why it's not?

20 MS. BISAUTA: They're all different persons  
21 under the law. They're all different permits. Each  
22 franchisee has its own permits. Just because they're  
23 related or have the same name -- I don't know if I'm --

24 MR. TUCKER: Ms. Steel, under Revenue and  
25 Taxation Code 6596, the only person who can rely on that  
26 advice is the person to whom it's written and to whom  
27 it's provided.

28 So, if a letter were written to me, Ms. Bisauta

1     could not rely on that, that advice. And this is simply  
2     treating the franchisees in that same capacity.

3             With the changes that are proposed, when those  
4     franchisees are identified, then they are able to rely  
5     on that advice. And it simply clarifies that they can  
6     rely on that advice. So that in the future if that  
7     advice were proven to be incorrect, then they would be  
8     eligible for relief pursuant to Revenue and Taxation  
9     Code 6596.

10            MS. MANDEL: A question.

11            DR. CHU: Ms. Mandel.

12            MS. MANDEL: It sounds like for particular  
13     franchisees who may be out there in the world and may  
14     have relied on a prior audit of another franchisee that  
15     they might have heard about from some miscellaneous  
16     franchisor, that there may be cases that are working  
17     their way through the system where they're going to  
18     claim they're entitled to rely on it.

19            And -- and, you know, presumably they're  
20     claiming things like one time years ago we had a letter  
21     to one division of a company and they had separate  
22     sellers permits for the different divisions and -- but  
23     it was within one company.

24            And so, the issue of who the person is under  
25     6596 presumably will get raised in those cases just like  
26     the question of legal and statutory successors was  
27     something that I think came up in some disputes in the  
28     past.

1           But it sounds like the issue is moving forward  
2   in the appeals process.

3           DR. CHU: So you said that if there was written  
4   advice in response to an audit then that advice would  
5   only refer to that particular taxpayer. But the same  
6   would apply to a letter, if -- if a franchisee just  
7   asked for a letter on a particular issue and just  
8   referred to themselves.

9           MS. BISAUTA: Exactly.

10          MS. MANDEL: Right.

11          DR. CHU: It would only apply to themselves and  
12   not to the other franchisees.

13          MS. BISAUTA: Correct.

14          MS. MANDEL: And I think that's why the  
15   clarification is that the franchisor, just like a trade  
16   association -- a franchisor can write in and give a list  
17   of all of their current franchisees and get the advice  
18   that they can then disseminate to their franchisees, and  
19   that the Board would also be sending, I guess, the  
20   letter, is what you were saying, to each franchisee and  
21   then those ones could. And then if there were new  
22   franchisees after that, just like with the trade  
23   associations, that would -- they would have to get a  
24   letter --

25          MS. BISAUTA: Right.

26          MS. MANDEL: -- that's -- because of the way  
27   the law is written that it's for the person.

28          DR. CHU: Okay. Well, thank you.

1 And is there a motion?

2 MR. LEONARD: A question.

3 DR. CHU: Oh, Mr. Leonard.

4 MR. LEONARD: Part of the statement, I think  
5 the regulation is supportable so I'm -- so I'll make the  
6 motion when appropriate, but one of the points made was  
7 this might have a -- either a detrimental or an impact  
8 on pending hearings before this Board.

9 If we adopt this regulation today, what's --  
10 what's your sense of a -- a retroactive impact on a --

11 MS. BISAUTA: We're in no way changing the --  
12 the section dealing with written advice as to audits.  
13 We're just doing some clarification language as to when  
14 they write in for opinions.

15 So --

16 MR. LEONARD: So the tax -- a franchisee who  
17 comes before us on audit who is being challenged as to  
18 the way they -- they did it is -- is -- the Department's  
19 not going to use this regulation against them, nor can  
20 they raise it as a defense, I guess, because it's all  
21 perspective.

22 MS. CRAINE: Well, in the letter here -- I have  
23 a copy for you all, if -- if you'd like it.

24 MR. LEONARD: Yeah, I would like a copy of the  
25 statement. That's --

26 MS. CRAINE: You want it right now?

27 There are several of the California franchisees  
28 being audited right now.

1 MR. LEONARD: I don't doubt that.

2 MS. CRAINE: And -- thank you. They're --  
3 they're going back and it's retroactive. We started  
4 charging the tax when we were told that the tax needed  
5 to be started to be charged. But what's happening now  
6 is they're going back to the time before that the -- the  
7 studios were -- before they were told they had to -- to  
8 be charging tax, the State wants to go and claim all  
9 those taxes from them --

10 MR. LEONARD: Okay.

11 MS. CRAINE: -- based on the two different  
12 audits.

13 MR. LEONARD: And that's the kind of issues we  
14 deal with, but I don't think it's affected by this  
15 regulation. They'd still have the same "I didn't know,"  
16 or, "I was given contrary advice at the time," or "This  
17 is the practice that was -- how we engaged in," would be  
18 their same case.

19 So I don't think it hurts the cases. I don't  
20 know how many we have in the queue and -- and hopefully  
21 that we'll --

22 MS. MANDEL: Yeah, they -- they -- presumably  
23 they'd be making whatever argument they're making under  
24 the statute, and the reg. says what the reg. says.

25 MR. LEONARD: Either -- either way, yeah.

26 MS. CRAINE: It's all laid -- in the letter  
27 there it's all laid out.

28 MR. LEONARD: Okay. I'll take a look at it.

1 Thank you, Dr. Chu.

2 DR. CHU: Okay. So, are you making a motion,  
3 Mr. Leonard?

4 MR. LEONARD: Yes, I am.

5 DR. CHU: Okay, is there a second?

6 MS. YEE: I'll second.

7 DR. CHU: Okay, motion by Mr. Leonard, second  
8 by Ms. Yee to adopt the proposed amendments to Sales and  
9 Use Tax Regulation 1705, relief from liability.

10 Without objection that is adopted.

11 ---oOo---

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REPORTER'S CERTIFICATE.

State of California     )  
                                  ) ss  
County of Sacramento    )

I, BEVERLY D. TOMS, Hearing Reporter for the  
California State Board of Equalization certify that on  
December 17, 2008 I recorded verbatim, in shorthand, to  
the best of my ability, the proceedings in the  
above-entitled hearing; that I transcribed the shorthand  
writing into typewriting; and that the preceding 15  
pages constitute a complete and accurate transcription  
of the shorthand writing.

Dated: January 21, 2009.

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BEVERLY D. TOMS  
Hearing Reporter

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9           MS. BISAUTA:  Exactly.

10          MS. MANDEL:  Right.

11          DR. CHU:  It would only apply to themselves and  
12   not to the other franchisees.

13          MS. BISAUTA:  Correct.

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20 they raise it as a defense, I guess, because it's all  
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22           MS. CRAINE: Well, in the letter here -- I have  
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17 is the practice that was -- how we engaged in," would be  
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25 MR. LEONARD: Either -- either way, yeah.

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27 there it's all laid out.

28 MR. LEONARD: Okay. I'll take a look at it.

1 Thank you, Dr. Chu.

2 DR. CHU: Okay. So, are you making a motion,  
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4 MR. LEONARD: Yes, I am.

5 DR. CHU: Okay, is there a second?

6 MS. YEE: I'll second.

7 DR. CHU: Okay, motion by Mr. Leonard, second  
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REPORTER'S CERTIFICATE.

State of California )  
 ) ss  
County of Sacramento )

I, BEVERLY D. TOMS, Hearing Reporter for the  
California State Board of Equalization certify that on  
December 17, 2008 I recorded verbatim, in shorthand, to  
the best of my ability, the proceedings in the  
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writing into typewriting; and that the preceding 15  
pages constitute a complete and accurate transcription  
of the shorthand writing.

Dated: January 21, 2009.

---

BEVERLY D. TOMS  
Hearing Reporter

**2008 MINUTES OF THE STATE BOARD OF EQUALIZATION****Wednesday, December 17, 2008****■ Proposed Amendments to Sales and Use Tax Regulations 1506, *Miscellaneous Services Enterprises* and 1524, *Manufacturers of Personal Property***

Robert Tucker, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the adoption of proposed amendments to clarify the application of tax to alteration charges (Exhibit 12.8).

Speakers were invited to address the Board, but there were none.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted the proposed amendments.

**■ Proposed Amendments to Sales and Use Tax Regulation 1705, *Relief from Liability***

Christine Bisauta, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the adoption of proposed amendments to provide a franchisee relief from liability to pay tax based on erroneous advice provided to a franchisor under certain conditions (Exhibit 12.9).

Speakers: Lindsay Craine, Executive Assistant, Color Me Mine

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted the proposed amendments.

**CHIEF COUNSEL MATTERS ■****■ RULEMAKING****■ Petition to Adopt a Regulation to Designate Qualified Veteran Itinerant Vendors as Consumers of Tangible Personal Property**

Carla Caruso, Senior Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the taxpayer's petition to adopt a new regulation providing that an itinerant vendor, who is a qualified United States veteran, is the consumer, not the retailer, of goods that the veteran sells (Exhibit 12.10).

Speakers: William M. Connell, Owner, All American Surf Dog

**2008 MINUTES OF THE STATE BOARD OF EQUALIZATION****Wednesday, December 17, 2008**

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and duly carried, Dr. Chu, Ms. Yee, Ms. Steel and Ms. Mandel voting yes, Mr. Leonard voting no, the Board directed staff, under the signature of Mr. Hirsig or Ms. Cazadd, to submit an opinion request to the Attorney Generals office asking who has rule making authority over matters such as this; citing the Brooks decision, history and intent of the current veterans statue, the 1872 & 1893 acts and any representations that have been made by the Department of Veterans Affairs as it relates to tax exemptions. Once a response is received staff will report back to the Board with the opinion of the Attorney Generals office. Should the Attorney Generals office state that the Board has rulemaking authority the Board would like staff to present a draft regulation. If the Attorney Generals office denies that the Board has authority then this petition would be deemed denied.

**■ Proposed Amendment to Conflict of Interest Code, Regulation 6001, General Provisions**

Blanca Breeze, Senior Tax Counsel, Settlement Division, Legal Department, made introductory remarks regarding the proposed amendment to Title 18 California Code of Regulations Section 6001, which represents the Board's Conflict of Interest Code. The proposed changes reflect the classification and organization changes that have taken place at the Board since the Conflict of Interest Code was last amended (Exhibit 12.11).

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the proposed amendment.

Ms. Yee congratulated Ms. Breeze on her retirement and wished her the best.

**■ Proposed Amendments to Sales and Use Tax Regulation 1620, Interstate and Foreign Commerce**

Tim Treichelt, Tax Counsel, Settlement Division, Legal Department, made introductory remarks regarding the section 100 amendments proposed to reinstate provisions for a 12-month test to demonstrate that a vehicle, vessel, or aircraft was purchased for use out of state (Exhibit 12.12).

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the proposed amendments.

Ms. Steel requested that staff plan an outreach to educate taxpayers on the changed regulation.

**2008 MINUTES OF THE STATE BOARD OF EQUALIZATION****Wednesday, December 17, 2008****■ Proposed Amendments to Sales and Use Tax Regulation 1502, Computers, Programs, and Data Processing**

Robert Lambert, Assistant Chief Counsel, Legal Affairs Division, Legal Department, made introductory remarks regarding the authorization to publish a proposed amendment to Regulation 1502, *Computers, Programs, and Data Processing* (Exhibit ■.■).

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the proposed amendments.

**■ OTHER CHIEF COUNSEL MATTERS****■ Proposed Amendments to the Rules of Order**

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the approval of the proposed amendments to the Parliamentary Rules of Order (Exhibit ■.■).

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the proposed amendments.

**■ Retired Annuitant - Hiring Delegation**

Kristine Cazadd, Chief Counsel, Legal Department, made introductory remarks regarding the clarification of Resolution Conferring Powers on Executive Director – Hiring Authority over Retired Annuitants (Exhibit ■.■).

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the hiring delegation.

**ADMINISTRATIVE SESSION****■ ADMINISTRATIVE MATTERS, CONSENT**

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

■ Action: Adopt the following resolutions extending its best wishes on their respective retirements and its appreciation for their service to the State Board of Equalization and the State of California (Exhibit ■.■).

**2008 MINUTES OF THE STATE BOARD OF EQUALIZATION****Wednesday, December 17, 2008**

Gary L. Evans, Business Taxes Specialist I, Internal Security and Audit Division,  
Headquarters

Wolfgang Liebelt, Business Taxes Administrator III, San Francisco District  
Office

Hue T. Nguyen, Office Technician, Special Procedures Section, Headquarters

Robert Wils, Supervising Tax Auditor II, Audit Determination and Refund  
Section, Headquarters

■ Action: Approve the Board Meeting Minutes of October 28-29, 2008.

■ Action: Approve the proposed revisions to Compliance Policy and Procedures Manual Chapter 4, Security (Exhibit ■.■).

■ Action: Approve the adjustment of sales tax prepayment rate on motor vehicle fuel, diesel fuel and jet fuel (Exhibit ■.■).

**■ ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS****■ Legislative Committee**

Action: Upon motion of Dr. Chu, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Legislative Committee report and the actions therein (Exhibit ■.■).

Committee votes were as follows: SEE NOV 15, 2007 FOR EXAMPLE

A recommendation of support for ■.■ duly passed with Ms. Yee, Dr. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no.

A recommendation of support for ■.■ duly passed with Ms. Yee, Dr. Chu, Mr. Leonard and Ms. Mandel voting yes, Ms. Steel voting no.

**■ OTHER ADMINISTRATIVE MATTERS****■ Deputy Directors Reports**

■ Randie Henry, Deputy Director, Sales and Use Tax Department, provided an update on the activities and accomplishments for the Enhancing Collections Task Force including responses to SEIU's May 2008 report titled *SEIU Local 1000 Findings and Recommendations on Methods to Enhance Tax Collections* and an updated Task Force Action Plan (Exhibit ■.■).

Speakers: Leora Hill, SEIU Local 1000, Enhancement Collections Task Force  
... SEIU Local 1000, Enhancement Collections Task Force

**Wednesday, December 17, 2008**

***Note: These minutes are not final until Board approved.***

**2008 MINUTES OF THE STATE BOARD OF EQUALIZATION****Wednesday, December 17, 2008**

The Board recessed at 2:20 p.m. and reconvened immediately in open session with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

**OTHER ADMINISTRATIVE MATTERS****Deputy Directors Reports**

Elizabeth Houser, Deputy Director, Administration Department, made introductory remarks regarding the request for approval of contracts over \$1 million (Exhibit ■.■).

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the contracts (Exhibit ■.■).

Mr. Leonard directed staff that an additional notice be sent to vendors who have contracts over \$1 million notifying them of possible fiscal cuts that the Board may be directed to make.

Elizabeth Houser, Deputy Director, Administration Department, provided a facilities update regarding the New York office relocation, the status of the on-going projects at headquarters and the building repair costs provided by the Department of General Services (Exhibit ■.■).

Elizabeth Houser, Deputy Director, Administration Department, provided a fiscal update regarding the budget update for 2008/09, 2009/10, the 2010/11 budget preparation tentative schedule and the governor's special session for the 2008/09 budget (Exhibit ■.■).

The Board directed staff to present its findings on potential furloughs and lay offs to the Legislature and the Department of Finance.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD  
DECEMBER 17, 2008****R. Nuri Otus, 308720 (BH)**

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Mr. Leonard directed staff to notify the taxpayer if his intentions are to petition for a rehearing, then he needs to present his case in front of the Board.

**2008 MINUTES OF THE STATE BOARD OF EQUALIZATION**

**Wednesday, December 17, 2008**

■ R.C.P. Block & Brick, Inc., 283573, 283514 (FH)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

The Board adjourned at 2:55 p.m.

*The foregoing minutes are adopted by the Board on ■, 2008.*



STATE OF CALIFORNIA

**STATE BOARD OF EQUALIZATION**

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Fourth District, Los Angeles

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State Controller

RAMON J. HIRSIG  
Executive Director

**October 17, 2008**

**To Interested Parties:**

**Notice of Proposed Regulatory Action  
by the  
State Board of Equalization**

**Proposed to Adopt Regulation 1705, *Relief from Liability***

**NOTICE IS HEREBY GIVEN**

The State Board of Equalization, pursuant to the authority vested in it by section 15606(a) of the Government Code, proposes regulatory changes to Sales and Use Tax Regulation 1705, *Relief from Liability*, in Title 18, Division 2, Chapter 4, of the California Code of Regulations, relating to sales and use tax. A public hearing on the proposed regulation amendments will be held in Room 121, 450 N Street, Sacramento, at 9:30a.m., or as soon thereafter as the matter may be heard, on Tuesday, December 16, 2008. At the hearing, any person interested may present statements or arguments orally or in writing relevant to the proposed regulatory action. The Board will consider written statements or arguments if received by December 16, 2008.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

CURRENT LAW: Revenue and Taxation Code section (Section) 6596 provides relief from tax, interest, and penalty charges due on a transaction if the Board determines that the taxpayer failed to pay tax because it reasonably relied on erroneous written advice from the Board. For relief to apply, the Board must have received a written request for advice on the transaction, the request must have identified the taxpayer to whom the advice applied, and the request must have fully described the facts and circumstances of the transaction. Section 6596 subdivision (d) states that, "[o]nly the person making the written request shall be entitled to rely on the board's written advice to that person." Accordingly, taxpayers cannot obtain relief by relying on a written opinion given to another business, even if the transactions are similar. However, a taxpayer may rely on advice given to the taxpayer's representative provided that the representative identifies the person for whom the advice is requested. Regulation 1705, *Relief from Liability*, is based upon Section 6596 and explains its provisions in more detail. In 1999, Regulation 1705 was amended to extend Section 6596 relief to trade or industry association members when an association requests written advice on behalf of its members. In order to obtain relief under Section 6596, the members must be identified in the association's request for advice. Proposed

regulatory changes to Regulation 1705, explain that similar relief applies to franchisees and franchisors.

### **COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS**

The State Board of Equalization has determined that the proposed regulation does not impose a mandate on local agencies or school districts. Further, the Board has determined that the proposed regulation will result in no direct or indirect cost or savings to any State agency, any local agency or school district that is required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government Code, or other non-discretionary cost or savings imposed on local agencies, or cost or savings in Federal funding to the State of California.

### **EFFECT ON BUSINESS**

Pursuant to Government Code section 11346.5(a)(7), the Board of Equalization makes an initial determination that the proposed regulatory changes to Sales and Use Tax Regulation 1705 will have no significant statewide adverse economic impact directly affecting business.

The adoption of the proposed regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

The regulation as proposed will not be detrimental to California businesses in competing with businesses in other states.

The proposed regulation may affect small business.

### **COST IMPACT ON PRIVATE PERSONS OR BUSINESSES**

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

### **SIGNIFICANT EFFECT ON HOUSING COSTS**

No significant effect.

### **FEDERAL REGULATIONS**

Proposed Regulation 1705 has no comparable federal regulations.

### **AUTHORITY**

Section 7051, Revenue and Taxation Code.

## REFERENCE

Section 6596, Revenue and Taxation Code

## CONTACT

Questions regarding the substance of the proposed regulation should be directed to Ms. Lisa Andrews (916) 322-5989, at 450 N Street, Sacramento, CA 95814, e-mail [Lisa.Andrews@boe.ca.gov](mailto:Lisa.Andrews@boe.ca.gov) or by mail at State Board of Equalization, Attn: Lisa Andrews, MIC:50, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0050.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, telephone (916) 445-2130, fax (916) 324-3984, e-mail [Richard.Bennion@boe.ca.gov](mailto:Richard.Bennion@boe.ca.gov) or by mail at State Board of Equalization, Attn: Rick Bennion MIC:81, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0080.

## ALTERNATIVES CONSIDERED

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, or be as effective as and less burdensome to affected private persons than the proposed action.

## AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an initial statement of reasons and an underscored version (express terms) of the proposed regulation. Both of these documents and all information on which the proposal is based are available to the public upon request. The Rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulation are available on the Internet at the Board's web site <http://www.boe.ca.gov>.

## AVAILABILITY OF FINAL STATEMENT OF REASONS

The final statement of reasons will be made available on the Internet at the Board's web site following its public hearing of the proposed regulation. It is also available for your inspection at 450 N Street, Sacramento, California.

## ADDITIONAL COMMENTS

Following the hearing, the State Board of Equalization may in accordance with law adopt the proposed regulation if the text remains substantially the same as described in the text originally made available to the public. If the State Board of Equalization makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the regulation. The text of any modified regulation will be mailed to those interested parties who

October 17, 2008

commented on the proposed regulatory action orally or in writing or who asked to be informed of such changes. The modified regulation will be available to the public from Mr. Bennion. The State Board of Equalization will consider written comments on the modified regulation for fifteen days after the date on which the modified regulation is made available to the public.

Sincerely,

A handwritten signature in cursive script, reading "Diane G. Olson".

Diane G. Olson, Chief  
Board Proceedings Division

DGO:reb

Enclosures

**Initial Statement of Reasons  
Overview/Non-Controlling Summary**

**PROPOSED REGULATION 1705, RELIEF *from Liability*,**

Proposed Regulation 1705 is proposed to be revised to explain when a franchisee is relieved from the liability to pay tax based on erroneous written advice provided to its franchisor?

**Specific Purpose**

The purpose of the proposed regulation is to interpret, implement, and make specific Revenue and Taxation Code section 7261. This regulation is necessary to provide guidance to taxpayers affected by this statute.

**Factual Basis**

Revenue and Taxation Code section (Section) 6596 provides relief from tax, interest, and penalty charges due on a transaction if the Board determines that the taxpayer failed to pay tax because it reasonably relied on erroneous written advice from the Board. For relief to apply, the Board must have received a written request for advice on the transaction, the request must have identified the taxpayer to whom the advice applied, and the request must have fully described the facts and circumstances of the transaction. Section 6596 subdivision (d) states that, “[o]nly the person making the written request shall be entitled to rely on the board’s written advice to that person.” Accordingly, taxpayers cannot obtain relief by relying on a written opinion given to another business, even if the transactions are similar. However, a taxpayer may rely on advice given to the taxpayer’s representative provided that the representative identifies the person for whom the advice is requested. Regulation 1705, *Relief from Liability*, is based upon Section 6596 and explains its provisions in more detail. In 1999, Regulation 1705 was amended to extend Section 6596 relief to trade or industry association members when an association requests written advice on behalf of its members. In order to obtain relief under Section 6596, the members must be identified in the association’s request for advice. Proposed regulatory changes to sales and use tax regulation 1705, *will* explain that similar relief applies to franchisees and franchisors.

Pursuant to Government Code section 11346.5(a)(8), the Board of Equalization finds that the adoption of the proposed regulation will not have a significant adverse economic impact on private businesses or persons. The regulation is proposed to interpret, implement, and make specific the authorizing statutes. These changes will clarify the interpretation or administration of the sales and use tax laws. Therefore, the Board has determined that these changes will not have a significant adverse economic impact on private businesses or persons.

## **Proposed amendments to Regulation 1705**

### **Regulation 1705. RELIEF FROM LIABILITY.**

*Reference: Section 6596, Revenue and Taxation Code.*

**(a) IN GENERAL.** A person may be relieved from the liability for the payment of sales and use taxes, including any penalties and interest added to those taxes, when that liability resulted from the failure to make a timely return or a payment and such failure was found by the Board to be due to reasonable reliance on:

- (1) Written advice given by the Board under the conditions set forth in subdivision (b) below; or
- (2) Written advice in the form of an annotation or legal ruling of counsel under the conditions set forth in subdivision (d) below; or
- (3) Written advice given by the Board in a prior audit of that person under the conditions set forth in subdivision (c) below. As used in this regulation, the term "prior audit" means any audit conducted prior to the current examination where the issue in question was examined.

Written advice from the Board may only be relied upon by the person to whom it was originally issued or a legal or statutory successor to that person. Written advice from the Board which was received during a prior audit of the person under the conditions set forth in subdivision (c) below, may be relied upon by the person audited or by a legal or statutory successor to that person.

The term "written advice" includes advice that was incorrect at the time it was issued as well as advice that was correct at the time it was issued, but, subsequent to issuance, was invalidated by a change in statutory or constitutional law, by a change in Board regulations, or by a final decision of a court of competent jurisdiction. Prior written advice may not be relied upon subsequent to: (1) the effective date of a change in statutory or constitutional law and Board regulations or the date of a final decision of a court of competent jurisdiction regardless that the Board did not provide notice of such action; or (2) the person receiving a subsequent writing notifying the person that the advice was not valid at the time it was issued or was subsequently rendered invalid. As generally used in this regulation, the term "written advice" includes both written advice provided in a written communication under subdivision (b) below and written advice provided in a prior audit of the person under subdivision (c) below.

#### **(b) ADVICE PROVIDED IN A WRITTEN COMMUNICATION.**

(1) Advice from the Board provided to the person in a written communication must have been in response to a specific written inquiry from the person seeking relief from liability, or from his or her representative. To be considered a specific written inquiry for purposes of this regulation, representatives must identify the specific person for whom the advice is requested. Such inquiry must have set forth and fully described the facts and circumstances of the activity or transactions for which the advice was requested.

(2) A person may write to the Board and propose a use tax reporting methodology for qualified purchases subject to use tax. If the Board concludes that the reporting method reflects the person's use tax liability for the defined population, then the Board may write to the person approving the use of the reporting method. The approval shall be subject to certain conditions. The following conditions shall be included in the approval:

- (A) The defined population of the purchases that will be included in the reporting method;
- (B) The percentage of purchases of the defined population that is subject to tax;
- (C) The length of time the writing shall remain in effect;
- (D) The definition of a significant or material change that will require rescinding the approved reporting method; and
- (E) Other conditions as required.

The written approval of the use tax reporting methodology is void and shall not be relied upon for the purposes of Revenue and Taxation Code section 6596 if the taxpayer files a claim for refund for tax that had been reported based upon this reporting method.

**(c) WRITTEN ADVICE PROVIDED IN A PRIOR AUDIT.** Presentation of the person's books and records for examination by an auditor shall be deemed to be a written request for the audit report. If a prior audit report of the person requesting relief contains written evidence which demonstrates that the issue in question was examined, either in a sample or census (actual) review, such evidence will be considered "written advice from the Board" for purposes of this regulation. A census (actual) review, as opposed to a sample review, involves examination of 100% of the person's transactions pertaining to the issue in question. For written advice contained in a prior audit of the person to apply to the person's activity or transaction in question, the facts and conditions relating to the activity or transaction must not have changed from those which occurred during the period of operation in the prior audit. Audit

## Proposed amendments to Regulation 1705

comments, schedules, and other writings prepared by the Board that become part of the audit work papers which reflect that the activity or transaction in question was properly reported and no amount was due are sufficient for a finding for relief from liability, unless it can be shown that the person seeking relief knew such advice was erroneous.

**(d) ANNOTATIONS AND LEGAL RULINGS OF COUNSEL.** Advice from the Board provided to the person in the form of an annotation or legal ruling of counsel shall constitute written advice only if:

(1) The underlying legal ruling of counsel involving the fact pattern at issue is addressed to the person or to his or her representative under the conditions set forth in subdivision (b) above; or

(2) The annotation or legal ruling of counsel is provided to the person or his or her representative by the Board within the body of a written communication and involves the same fact pattern as that presented in the subject annotation or legal ruling of counsel.

**(e) TRADE OR INDUSTRY ASSOCIATIONS OR FRANCHISORS.** A trade or industry association requesting advice on behalf of its member(s) must identify and include the specific member name(s) for whom the advice is requested for relief from liability under this regulation. A franchisor requesting advice on behalf of its franchisee(s) must identify and include the specific franchisee name(s) for whom the advice is requested for relief from liability under this regulation.

For an identified trade or industry member or franchisee to receive relief based on advice provided in the written communication to the trade or industry association or franchisor, the activity or transactions in question must involve the same facts and circumstances as those presented in the written inquiry by the association or franchisor.

## Regulation History

**Type of Regulation:** Sales and Use Tax

**Regulation:** 1705

**Title:** *Relief from Liability*

**Preparation:** Lynn Whitaker

**Legal Contact:** Christine Bisauta

Amendments are proposed to be adopted to clarify when a franchisee is relieved from sales or use tax liability based on erroneous advice provided to its franchisor.

### History of Proposed Regulation:

September 16, 2008	BTC, Board Authorized Publication (Vote 5-0)
July 17, 2008	Second IP meeting
May 16, 2008	Last day for IP to respond to Initial Discussion Paper
April 29, 2008	First Interested Parties (IP) meeting

Sponsor:	NA
Support:	NA
Oppose:	NA